



Open Government Partnership Kosovo Initiative.



www.ogpkosova.org



Republika e Kosovës
Republika Kosova-Republic of Kosovo
Qeveria - Vlada - Government

Ministria e Administrimit të Pushtetit Lokal
Ministarstvo Administracije Lokalne Samouprave
Ministry of Local Government Administration

Evaluation Report of Open Government Partnership Eligibility Criteria

A state's eligibility for OGP is determined by evaluation in four critical areas of open government: 1) fiscal transparency, 2) access to information, 3) declaration of assets of officials and 4) engagement of citizens. Countries can earn up to four points for their achievement in each of these fields, for a total of a maximum of 16 points. Since some of the evaluation criteria do not cover all countries, those countries are assessed only by three criteria (in three areas) and can earn a maximum of up to 12 points. To cross the OGP eligibility threshold, countries must collect at least 75% of the total number of points, i.e. at least 12 out of 16 or 9 out of 12 depending on the number of areas they are evaluated on.

1. Fiscal transparency (maximum number of points: 4)

Open, detailed and transparent debate in the parliament is indirectly conditioned by: a) the Parliament's possibility to have access to important documents on the budget; b) the role of parliamentary committees in budget control; c) the Parliament's capacity for budget research and analysis; and d) the dynamics of political parties.

The Government of Kosovo has implemented a legal framework for fiscal transparency and accountability. The Law 2003/12 on Access to Official Documents regulates the public disclosure of revenues and expenditures of the Kosovo Consolidated Budget (KCB). Once the KCB has been approved by the Parliament, the budget becomes a law and is published in a book form (available upon request) at the Ministry of Finance and on its website. Kosovo is committed to enforcing fiscal transparency and accountability, and the laws and regulations governing fiscal procedures are sufficient and fully implemented.

The Ministry of Finance and Transfers of Kosovo publishes the budget of the Republic of Kosovo and financial reports on budget expenditures, on the official website of the Institution.¹ The Republic of Kosovo has developed a Transparency Portal which contains budget data on

¹ <https://mf.rks-gov.net/Page.aspx?id=1.29>

central and local institutions of the Republic of Kosovo, with the possibility of filtering the data by year or quarter.²

The Auditor General of the Republic of Kosovo is the highest institution of economic and financial control in the country and the National Audit Office is an independent institution, which assists the Auditor General in performing his/her duties. The National Audit Office is established by the Law 05/L-055 on the Auditor General and the National Audit Office of the Republic of Kosovo, and its organization is regulated by internal administrative acts. The National Audit Office complies and publishes Annual Audit Reports (AAR), presenting audit findings and conclusions, as well as recommendations on the Annual Financial Reports of the Government of Kosovo.³ in order to increase the credibility of the public spending. All NAO reports are accessible to the public and can be found on the official website of the institution.

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Implies timely publication of basic documents for the state budget. Budget drafting and proposal as well as reports on budget expenditures are an important part of fiscal transparency.

The OGP focus of the evaluation is on the budget proposal and the audit report. Two points are allocated for each of these documents if they are available to citizens - 4 points in total.

1	Budget Proposal Available	2
2	Audit Report Available	2

2. Access to information (maximum number of points: 4)

The Parliament of the Republic of Kosovo, Pursuant to Article 65 (1) of the Constitution of the Republic of Kosovo, has approved: LAW NO. 06/L-081 ON ACCESS TO PUBLIC DOCUMENTS⁴ This law guarantees the right of every person, without discrimination on any grounds, to have access to public documents, produced, received, kept or controlled by public institutions, as well as the right to reuse public sector documents. This law applies to all public documents that are produced, received, kept, or controlled by public institutions, unless otherwise limited by applicable law. The access to public documents is performed through proactive publication of public documents by public institutions, and through the request of a party for access to public documents.

Every person has the right to reuse public documents based on the conditions and restrictions set out in this law. Data openness and transparency in the public sector serve for accountability to the public, for social, economic and democratic development and advancement. The right of access to public documents belongs to every person in the same way and equally. Public institutions anyone no one in exercising the right of access to documents compared to others.

The Law applies to all public institutions, including:

- Ministries and their respective agencies;
- Municipalities;
- Courts;
- Prosecution offices;

² <https://ptmf.rks-gov.net/Budget/2021/9>

³ <https://www.zka-rks.org/publications/>

⁴ <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=20505>

- Schools, Colleges and Universities;
- Public companies in which the state owns a majority stake or which exercise public functions.

Independent institutions such as:

- Office of the Ombudsman;
- National Audit Office;
- Central Election Commission;
- Central Bank of Kosovo;
- Independent Media Commission;
- Independent institutions established under Chapter XII of the Constitution of the Republic of Kosovo.

All public institutions keep on their official website information on the procedure and form of filing a request for access to public documents. Additionally, every public institution is obliged to have an official e-mail address, specifically for communication with the public and to assign one (1) person to regularly check the received data. The same person may be responsible for updating the information, ensuring access thereto and for the credibility of information provided on the websites of the relevant public institution.

The Information and Privacy Agency (IPA)⁵ is an independent agency, responsible for overseeing the implementation of Law no. 06/L-081 on Access to Public Documents and Law no. 06/L-082 on Personal Data Protection, in order to protect the fundamental rights and freedoms of natural persons, in relation to the processing of personal data, as well as guaranteeing access to public documents.

Based on the Law on Access to Public Documents, the Agency is authorized to undertake and impose measures provided therein, as well as promote and train public institutions in the implementation of this law. In addition to other duties and responsibilities provided by this law and other laws, the Agency has other duties and responsibilities such as:

- monitor and report on compliance with and observance of this Law by public institutions;
- recommend changes and reforms of a general, but also specific nature, addressed to specific institutions regarding the right of access to public documents;
- cooperate with the institutions responsible for organizing and holding trainings for public officials for access to public documents and for the effective implementation of this law;
- publish the obligations of public institutions deriving from this law, and the rights of each person provided therein;
- undertake and impose any of the measures provided therein for the effective implementation of this Law.

The Agency is also authorized to initiate proceedings for declassification of classified documents, pursuant to the relevant law on document classification.

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⁵ <https://aip.rks-gov.net/>

The existence of a law for access to information, that guarantees the right of citizens to have access to public sector information and government documents, is essential for open governance. During the evaluation process, 4 points are allocated to countries that have laws on access to information (in Kosovo this is the Law on Access to Public Documents), 3 points are allocated to countries that have a constitutional provision guaranteeing access to information, and 1 point are allocated to countries that have a draft law on access to information which is under consideration. Countries with a constitutional provision and a draft law under the consideration stage, will be allocated with only 3 points for the constitutional provision.

1	Access to Information Law Available	4
2	Constitutional Provision guaranteeing Access to information Available	3
3.	Draft Law on Access to Information	1

3. Declaration of assets of public officials (maximum number of points: 4)

The rules requiring the declaration of incomes and assets of senior elected officials are essential in the efforts to fight corruption and to have an open and accountable government. It is also important that this data is made public for the citizens.

The Parliament of the Republic of Kosovo, pursuant to Article 65 (1) of the Constitution of the Republic of Kosovo, adopted: LAW No. 04/L-050 ON THE DECLARATION, ORIGIN AND CONTROL OF THE PROPERTY OF SENIOR PUBLIC OFFICERS AND DECLARATION, ORIGIN AND CONTROL OF GIFTS OF ALL PUBLIC OFFICIALS⁶. This law sets the obligations of senior public officials to declare assets, revenues and their origin, the Agency's duty to verify the declaration and perform the verification of assets, and the obligations of all officials to declare their gifts and their origin. This law regulates the procedure of declaration and control of property, revenues and liabilities of senior public officials and their family members, and prescribes the relevant sanctions. This law also regulates the procedure of declaration, control and the origin of gifts received by all officials.

The competent authority administering and maintaining the Register is the Anti-Corruption Agency. The Agency verifies the declaration of assets made by the senior public officials. Administration and maintenance of the Register includes: receipt and registration of the made declarations; the Agency also archives the asset declaration data for a period of ten (10) years from the moment of termination or dismissal from office. After the expiration of this period, the Agency destroys the respective data.

Relevant institutions are obliged to ensure public access to the Register, in accordance with the procedures set out in the Law on Access to Official Documents. Currently, the asset declarations of officials holding public office can be found and are accessible on the official website of the Anti-Corruption Agency, as required also by the law governing the operation of this Agency.⁷

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⁶ <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2767>

⁷ https://www.akk-ks.org/deklarimi_i_pasuris/173/subjektet-deklaruese-dhe-lista-e-zyrtarve/173

In terms of the OGP evaluation, 4 points are allocated to countries that have a law which envisages for the officials to declare their assets and that at the same time the respective information is available to the public, 2 points are allocated to countries that have a law that requires officials to declare their assets, and 0 points to countries that have no law requiring officials to declare their assets.

In Kosovo this would be the Law on Declaration, Origin and Control of Gifts of All Public Officials.

1	Public Officials Asset Disclosure Law	2
2	Public Access to information about Public Officials Assets	2

4. Civic engagement

All public institutions in Kosovo have a constitutional obligation to engage citizens in their work, whether in the design or implementation of their policies and programs. The majority of the obligation falls on the municipal level, where each municipality must inform the citizens about "important plans or programs for the public interest". The Law on Local Self-Government guarantees citizens direct participation in decision-making at the local level: participation in Municipal Assembly sessions as an observer, participation in public meetings, participation in public hearings, the right to petition, referendum, etc.

Citizens of a municipality have the right to participate in the activities of the respective municipality, for the right of petition, civic initiative, local referendum, whereas municipalities are obliged to establish consultative committees within the sectors, to which representatives of CSOs should be invited. At the governmental level, all government acts (except administrative decisions) should be consulted with the public in advance, while the government is obliged to provide sufficient information about the document being consulted, sufficient time for the citizens' contribution, and to report on the results of consultations. Public hearings can be organized for all laws adopted by the Parliament of Kosovo, while CSOs can also participate in the meetings of the parliamentary committees.

Although the law has guaranteed different ways and methods of citizen engagement in decision-making, the motivation of citizens to be part of processes at the local level remains a constant challenge.

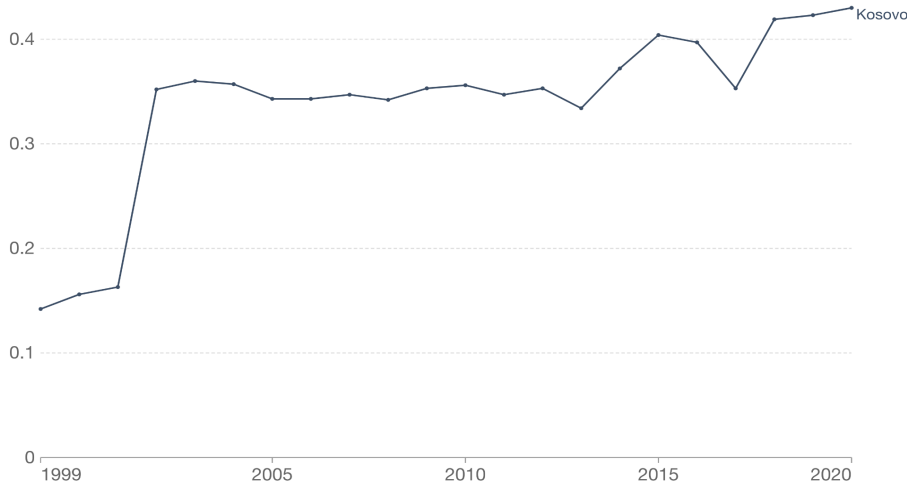
Kosovo is part of the measurement made by the Varieties of Democracy (V-Dem) which produces the largest global data on democracy and measures various attributes of democracy with almost 30 million data points for 202 countries.⁸ The V-Dem Liberal Democracy Index rates the strength of democratic institutions from weak to strong (0-1). The index aggregates variables into several dimensions, including voting right, fair elections, equality before law, restrictions on the executive, and freedom of organization and expression. So it distinguishes five high-level principles of democracy: electoral, liberal, participatory, deliberative and egalitarian, and collects data to measure these principles. The data is updated, expanded and released every year.

⁸ https://www.v-dem.net/static/website/files/dr/dr_2021.pdf

Kosovo has marked an improvement compared to 2010, and it is ranked as an electoral democracy, and for 2020 has reached a rating of 0.43 in the Liberal Democracy Index.

V-Dem Liberal democracy index, 1999 to 2020

The V-Dem Liberal Democracy Index scores the strength of democratic institutions from weak to strong (0-1). The index aggregates variables across several dimensions, including suffrage rights, clean elections, equality before the law, constraints on the executive, and freedom of association and expression.



Source: V-Dem Dataset (2021)

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Fig 1. V-Dem Liberal Democracy Index, 1999-2020 for Kosovo ⁹

In Kosovo, improvements in electoral integrity, along with the improved academic freedoms, civil society and the media, among others, contributed to raising the country's ranking and rating in the Liberal Democracy Index. Out of 179 countries, Kosovo ranks best in the Western Balkans, at the 78th position, followed by Northern Macedonia (79), Albania (85), Montenegro (94), Bosnia and Herzegovina (98) and Serbia (119). While Kosovo and Northern Macedonia are listed as electoral democracies, Albania, Montenegro and Bosnia and Herzegovina are in a transitional category between electoral democracies and electoral autocracies. Serbia is the only country in the region that is firmly established in the group of electoral autocracies.

Nevertheless, Kosovo still has a long way to go to further improve its promotion of democracy, including the EU's contribution and role as an external actor, both in terms of its legitimacy role and its assistance to democracy in furthering democratic reforms in the country.

Open government requires that citizens be given the opportunity to participate and engage in policy-making and governance, including the protection of fundamental human rights and freedoms.

[CHECK THE INDEX ON KOSOVO V-DEM]

OGP VALUES CHECK ASSESSMENT

Furthermore, in addition to performance evaluation in the four areas mentioned above, countries wishing to become part of the OGP must also pass the so-called Value Check Assessment. This assessment is based on two indicators from *Varieties of Democracy*:

1. *Entry and Exit of NGOs - Measures the degree of control exercised by governments on the entry and exit of Non-Governmental Organizations (NGOs) into public life.* The measurement is done as follows:

- 4 points: no control (unconstrained)
- 3 points: Minimal control
- 2 points: Moderate control
- 1 points: Significant control
- 0 points: Monopolistic control

The COVID - 19 pandemic affected most aspects of life in Kosovo during 2020. The overall sustainability of CSOs remained stable in 2020. The limited legislative agenda and the circumstances surrounding the pandemic affected the ability of CSOs to defend their causes. A total of about 10,200 organizations are registered in Kosovo by the end of 2020. This represents an increase by 468 over the past year, a figure consistent with the growth in previous years. Due to the lack of clarity in the deregistration process, many organizations remain registered even though they are no longer active.

According to the Sustainability Index for Civil Society Organizations for 2020, the overall Sustainability of CSOs in Kosovo for 2020 is estimated at 3.6,¹⁰ whereas the legal environment governing CSOs has not changed during 2020, and is estimated at 3.4 out of 7.0.¹¹ The Sub normative acts implementing the Law on Freedom of Association in NGOs (or the Law on NGOs), which was promulgated in April 2019, continued to be drafted in 2020. Registration continues to be easy, most of the steps are done online. Due to COVID-related restrictions and adjustments in 2020, the NGO Department issued electronic registration certificates to CSOs. CSOs continued to operate during 2020 without any major obstacles. As done in previous years, they have to submit narrative reports to the NGO Department and tax reports to the Tax Administration.

2. *CSOs Repression - Measures the extent to which governments are working to suppress civil society organizations.* The measurement is performed in the following manner:

- 4 points: No
- 3 points: Weakly
- 2 points: Moderately
- 1 points: Substantially
- 0 points: Severely

State harassment is not a common practice in Kosovo and CSOs act without fear of repression. The government's strategy for cooperation with the civil society remains the main channel of cooperation with the sector, but remains largely unimplemented. Public hearings are mandatory for all legislative and regulatory processes affecting communities at both the local and central

¹⁰ <https://csosi.org/>

¹¹ <https://www.fhi360.org/sites/default/files/media/documents/csosi-europe-eurasia-2020-report.pdf>

levels. CSOs are also generally invited to participate in the working groups and work of parliamentary committees, but due to COVID-19, during 2020 the Parliament was practically inactive and the few sessions that were convened were focused on issues related to budgeting or ratification of international agreements. Meanwhile, other existing platforms, such as the online public consultation platform for laws, are not used by CSOs, citizens and experts.¹²

¹² <https://www.fhi360.org/sites/default/files/media/documents/csosi-europe-eurasia-2020-report.pdf>

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