SUPPORT TO CIVIL CODE AND PROPERTY RIGHTS
EUROPEAID/133833/C/SER/XK

CONTRACT NO. 2014/344-574

INCEPTION REPORT
AUGUST 2014
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<th>“Support to Civil Code and property rights”</th>
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**Lead Contractor:** Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH GIZ International Services

Contact person:
Ms. Elena Fernandez Frontan, Project Director
Tel.: +377 45 352428 / +381 38 223 138
E-mail: elena.frontan-fernandez@giz.de

In association with: Kosovo Legal Services Company L.L.C and B&S Europe

**Contracting Authority:** European Union Office in Kosovo
Kosova str. 1
10000 Pristina, Kosovo
P.O. Box 331

Contact person:
Mr. Enrico VISENTIN, Rule of Law Task Manager
Tel: +381 38 5131286
E-mail: enrico.visentin@eeas.europa.eu

**Beneficiary:** Ministry of Justice
Government Building No. II
1000 Pristina, Kosovo

Contact person (Focal Point):
Ms. Selvije Elezaj
Head of Division for Policy Coordination
Tel: +381 38 20018244 / +377 45 302317
E-mail: selvije.elezaj@rks-gov.net

**Date of report:** 15 August 2014
**Reporting period:** 1 July – 15 August 2014
**Author of report:** Dr Victor Chimienti
Team Leader & Law of Obligations Expert
Tel: +377 45 899144
E-mail: victor.chimienti@giz.de
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0 INTRODUCTION

0.1 Executive Summary

This report describes the outcome of the Inception Phase of the project “Support to Civil Code and Property Rights” (hereafter, the “CCPR Project”) and responds to the requirement of the Contracting Authority to assess the conditions on the ground as they have evolved since the drafting of the Terms of Reference (ToR).

A project synopsis is presented in Chapter 1, while the background and rationale of the CCPR Project are discussed in Chapter 2. Chapter 3 presents the activities carried out during the Inception Phase. In this context, a key strategy issue was the coordination with other donors and USAID in particular, specifically as regards the property rights sector (see Chapter 3.4, p. 18).

The project implementation strategy described in the project proposal has been adjusted to the current situation, requests of the Contracting Authority, and needs of the Beneficiary. Some key issues were discussed, clarified and agreed during the Inception Phase. Those issues, which are essentially related to the need to define the concept of Civil Code and the extent of project activities in the property rights sector, are analysed in detail in Chapter 4.

The activities and outputs foreseen in the TOR and technical proposal remain the same as originally planned. However, with the view to ensuring sustainable and achievable results with reference to Component C.9 of the TOR, this Inception report has narrowed down the perimeter of project activities, which otherwise would have been too wide and might have made outputs unattainable, as explained in Chapter 4.2, p. 20.

The project Work Plan (for the whole duration of the project) is presented in Chapter 5. It is structured along three Components.

- Component A - Donors coordination and overall strategy. The Activities of this Component are structured to ascertain coordination and cooperation with other donors and projects in order to optimise the outcome of the CCPR Project.
- Component B - Civil Code.
- Component C - Property Rights.

Whereas the Activities of Components B and C are intended to overcome the inherent problems of the complexity of existing legislation in the area of Civil Code and Property Rights, the Activities of Component A will help to avoid redundancies and will use synergy effects through coordination and cooperation with other donors and projects and, thus, will optimise the results of this Project.

The same chapter contains a section on planning for the next reporting period and one on implementation arrangements.

In Chapter 6 we present:
- the role and position of Beneficiary and Stakeholders, and
- the management structure of the CCPR Project.

Chapter 7 and 8 respectively include the profiles and inputs of Non-key Experts and the Reporting Schedule.

A list of Annexes is included in Chapter 9.

The project team counts on the support of the Beneficiary and will be grateful for any suggestions and opinions that will contribute to the overall successful implementation of the CCPR Project.
## Abbreviations

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<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>ABGB</td>
<td>Allgemeines Bürgerliches Gesetzbuch (Austrian Civil Code)</td>
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<td>ADR</td>
<td>Alternative Dispute Resolution</td>
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<td>BGB</td>
<td>Bürgerliches Gesetzbuch (German Civil Code)</td>
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<td>BMZ</td>
<td>German Federal Ministry for Economic Cooperation and Development</td>
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<td>CLE</td>
<td>USAID Contract Law Enforcement Program</td>
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<td>DCFR</td>
<td>Draft Common Frame of Reference</td>
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<td>ECHR</td>
<td>European Convention for Human Rights</td>
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<td>ECLO</td>
<td>EC Liaison Office (Kosovo)</td>
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<td>EU</td>
<td>European Union</td>
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<td>EUO</td>
<td>EU Office in Kosovo</td>
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<td>EULEX</td>
<td>European Rule of Law Mission in Kosovo</td>
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<td>GIZ</td>
<td>Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH</td>
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<td>GOK</td>
<td>Government of Kosovo</td>
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<td>GIZ IS</td>
<td>GIZ International Services</td>
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<td>IPA</td>
<td>Instrument of Pre-Accession Assistance</td>
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<td>KPA</td>
<td>Kosovo Property Agency</td>
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<td>KTA</td>
<td>Kosovo Trust Agency</td>
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<td>M/Ds</td>
<td>Man-days</td>
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<td>MoJ</td>
<td>Ministry of Justice</td>
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<td>MoU</td>
<td>Memorandum of Understanding</td>
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<td>NKE</td>
<td>Non-key Expert</td>
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<td>PMO</td>
<td>Prime Minister's Office</td>
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<td>PRC</td>
<td>Property Rights Coordinator</td>
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<td>PRP</td>
<td>USAID Property Rights Program</td>
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<td>OSCE</td>
<td>Organisation for Security and Cooperation in Europe</td>
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<td>RIA</td>
<td>Regulatory Impact Assessment</td>
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<td>SAPD</td>
<td>Stabilisation and Association Process Dialogue</td>
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<td>SDC</td>
<td>Swiss Agency for Development and Cooperation</td>
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<td>SIDA</td>
<td>Swedish International Development Corporation Agency</td>
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<td>SOE</td>
<td>Socially owned enterprise</td>
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<td>ToR</td>
<td>Terms of Reference</td>
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<td>UNDP</td>
<td>United Nations Development Program</td>
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<td>UNMIK</td>
<td>United Nations Interim Administration Mission in Kosovo</td>
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<td>USAID</td>
<td>United States Agency for International Development</td>
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1 PROJECT SYNOPSIS

The CCPR Project aims to support and move forward the approximation of the existing legislation in Kosovo in the area of Civil Code and property rights to (1) the acquis in the area of justice, enterprise and industrial policy, (2) the ‘general principles of civil law’ (as referred to in the case law of the Court of Justice), and (3) the principles of the Council of Europe (contained in the ECHR and its Protocols). This field of intervention is indispensable for the Stabilization and Association Process requirements and Kosovo’s political priorities for integration into the EU.

The Rationale for intervention lies in the following arguments:
- the overall legal situation with regard to the Civil Code and property rights, and in particular the lack of an updated and comprehensive Civil Code and the growing body of widely scattered laws regulating both the civil law and property rights sectors
- the consequent need to internally harmonise and improve existing laws, and
- the need to ensure compliance with European legal standards in order to meet the requirements of the acquis, and
- the alignment with European best practices.

The situation is characterised by the following:
- The legislation on Civil Code and property rights issues is fragmented and incoherent, stemming from different periods of statehood. Thus, inconsistencies and contradictions in legislation exist which lead to conflicts.
- Certain basic civil laws exist, such as a law on obligations, family law, law on inheritance, labour law, law on property (which also covers real guarantee rights such as mortgage and pledge), but need to be analysed, reviewed, corrected and brought into line with an overall coherent concept of Civil Code.
- Implementation of existing laws is weak and practice to apply such laws is inadequate.

The CCPR Project shall be executed in the context (and as the conclusive phase) of Component 1 of “Framework Contract to Design the Project in the Area of Civil Code and Property Rights under IPA 2013”. For this purpose, an Assessment Report has been financed by IPA providing an analysis of the current situation in the area of Civil Code and property rights related legislation, including the contributions of other donors and projects. Reference is made to the report above (hereafter referred to as the “IPA Assessment Report”) at various points of this Inception Report.

The IPA Assessment Report contains also recommendations for further IPA assistance in the field of Civil Code and property rights legislation which should focus on two distinctive phases:
- Phase 1 – Legislative reforms, and
- Phase 2 – Monitoring of project implementation.

Countries aspiring to join the European Union, as Kosovo, must harmonise their national laws, regulations and procedures with those of the EU in order to make the entire legal structure of the EU effective through the acquis. Thus, this Project will make a major contribution to this goal.

1.1 Overall objective

The overall objective of the CCPR Project is:
- to strengthen the rule of law, and

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1 An important source of professional advice and information is the collective work of the EU Study Group on a European Civil Code and of the Research Group on EC Private Law which have produced the "Principles, Definitions and Model Rules of European Private Law – Draft Common Frame of Reference (DCFR)". See various sets of model rules such as the Lando Group’s Principles of European Contract Law (PECL) and the Principles of European Tort Law.
to approximate domestic legislation of Kosovo with *European standards* in the area of justice and property rights.

This formula stipulates that the CCPR Project aims to bring Kosovo legislation close to *European* – not to any other international – legal standards², which will require coordination and close cooperation with the project objectives of other donors, in particular, with the similar and concurrent USAID funded “Property Rights Program”.

While the ToR require that the CCPR Project proposal should follow European standards and traditions of Civil Code and Property Rights regime, they also demand to coordinate and cooperate with other donors and projects, in particular with the USAID which plays a leading role in this field in Kosovo.

### 1.2 Purpose and specific objectives

According to the ToR, the *specific objectives* of the CCPR Project can be described as follows:

- to conduct an overall analysis of the existing Civil Code,
- to conduct an overall analysis of property rights in Kosovo and, on the basis of that, to start the process of improving the overall coherence of the regulatory framework on property rights.

The CCPR Project relates to the importance of harmonisation and development an all-inclusive Civil Code and its harmonisation with the *acquis* and other relevant EU principles, as well as the strengthening of property rights for the benefit of the rule of law, the economic and social development, and the European integration of Kosovo. The principles of the Council of Europe, expressed in the ECHR, the ‘general principles of civil law’ (as referred to in the case law of the Court of Justice)³, and the *acquis* shall serve as tools to reach these goals.

The major results, as listed below in more detail, should be:

- Following a comprehensive analysis of existing problems over property rights, an overall *plan* for reforming the Civil Code and property rights related legislation is developed. The plan will provide the basis for the analysis of the policy⁴ and legal framework of the overall National Strategy on Property Rights.
- A *comprehensive* Civil Code for Kosovo is drafted.

From the wording of the specific objectives, the project work will be structured along *three Components*:

- **Component A - Donors coordination and overall strategy.** The Activities of this Component are structured to ascertain coordination and cooperation with other donors and projects in order to optimise the outcome of the CCPR Project.
- **Component B - Civil Code.**
- **Component C - Property Rights.**

Although Components B and C to a large extent are construed as parallel and interdependent, they should not be confused (the specifics of each Component are elaborated in detail below

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² A further confirmation of this understanding can be found under page 14 of the ToR where it is foreseen, as regards respectively result 1.3 and result 2.3, that a legal assessment should be performed of both property and Civil Code related legislation “in the light of European legal standards and best practice” in order to identify gaps and inconsistencies.

³ Interpreting provisions of EU Legislation, and directives in particular.

⁴ The policy dimension may however be relevant only to the extent that there is a legislative gap to be filled which requires the consideration of different policy options, or if choice among various options at policy level is available in order to address a certain shortcoming in the existing law.
under the specifics of the Activities of this proposal). In general, Component B should be seen as a set of activities aiming to achieve the codification of a fully integrated and unified regulatory framework for all essential civil laws, i.e. the Civil Code, whereas the main result of Component C will be the drafting of an overall plan of reform providing the basis for the analysis of the policy and legal framework of the overall National Strategy on Property Rights. In this regard, it should be noted that the property rights reform and its exact layout as designed in the overall plan of reform and the National Strategy will depend much on the outcome of the assessments carried out and the consultations with the Beneficiary, as conducted in close cooperation and coordination with all relevant stakeholders, donors and their implementing partners. However, the final design of the property rights reform is likely to be a combination of Civil Code legislation (e.g. private property law) and a separate set of individual laws and/or law amendments, on special issues relating to the property rights sector.

It is also important to emphasise that Component C presents a high level of criticality. This is due to several reasons such as the intrinsic complexity of the legal and regulatory framework in Kosovo, i.e. a complex mix of Yugoslav-era laws, UNMIK regulations and Kosovo laws. Another reason is the inherent problematic nature of property rights in Kosovo as a result of the events which have occurred in the region. Further difficulties have arisen from the conflict in the late 1990s which also resulted in the destruction of documents, the relocation of cadastral record books to towns outside of Kosovo, the displacement of residents to unknown destinations, and the prevalence of informal property transfers both before and after the conflict. Furthermore, during the 1999 conflict, properties were destroyed, people displaced, and residences and lands illegally occupied and re-occupied. Illegal construction was also prevalent in the immediate aftermath of the conflict.

The IPA Assessment Report, EC Progress Report (2013), EC Feasibility Study (2012) as well as other documents point out the need to focus inter alia on the following issues:

- Fragmented regulatory framework on property rights and civil law
- Gaps and inconsistencies in key property rights laws and Civil Code legislation
- Overlapping and vague jurisdiction among government authorities in the area of property rights and Civil Code
- Coherent regulatory scheme of ownership and other property rights, including a clear regime of cadastre and property rights registration
- Conflict of legal traditions as a result of historical developments in the Civil Code and property rights related areas
- Consistent legal terminology across Civil Code and property rights legislation
- Problems related to special types of property (primarily socially owned property) such as privatisation related problems (e.g. 99-year Leasehold) or lack of compensation scheme for socially owned apartments and problems related to special proceedings such as expropriation and restitution
- Weak judicial protection and enforcement of property rights
- Illegal constructions

A specific issue is represented by the problems related to the ability of women to exercise their property rights in practice, with specific regard to inheritance rights. Women’s property rights, while protected de jure, are insufficiently protected de facto. This problem may be dealt with under Component B of the CCPR Project as part of the Civil Code codification process. However, the USAID Property Rights Program aims as well to address challenges related to protecting women’s rights to inherit, own and use property (see e.g. Objective 3: “Enhanced Women’s Rights to Use Property in Practice”). This will require close cooperation and coordination between the two projects in order to avoid duplication and inconsistencies and ensure that the requirements of the ToR are met.
2 BACKGROUND AND RATIONALE

2.1 Civil Code and property rights

2.1.1 Situation in the sector

The implementation of the CCPR Project will be influenced by the fact that (1) Kosovo’s independence was achieved only six years ago after warfare, violence and destruction and (2) the specific situation in the field of Civil Code and property rights legislation, which is characterised by incoherence, fragmentation, and consequential lack of implementation of laws and regulations.

Attempts have been made to establish a legal continuum from the Kingdom of Serbia to the Kingdom of Yugoslavia to the Federal Republic of Yugoslavia to the Republic of Serbia and Montenegro to the Republic of Serbia, before the independence of Kosovo was declared in 2008. Over a period of less than 100 years five different legal regimes followed one another, thus providing a certain basis for legal thinking which has been preserved in one way or another and forms a skeleton of legal tradition.

Between 1999 and 2008 when Kosovo declared its independence, the United Nations Mission in Kosovo (UNMIK) issued a series of laws and regulations governing property issues, established independent institutions to privatise some Socially Owned Enterprises (SOEs) and to address private property claims related to the conflict, such as the Kosovo Trust Agency (KTA) and the Kosovo Property Agency (KPA). Furthermore, UNMIK created a Special Chamber within the Supreme Court to hear property appeal claims stemming from these independent institutions.

In 2008, the Government of Kosovo drafted a new Constitution and issued laws and regulations addressing property rights. It should be mentioned that the Constitution of Kosovo contains special provisions for property rights and, thus, could serve as the starting point for the codification of property law.

The origin of civil law in Kosovo we can trace back to Yugoslav civil law. Historically, Yugoslav civil law was influenced strongly by the Austrian Civil Code (ABGB), the German pandect system of the BGB and the Swiss Civil Code. The Code Napoleon also influenced parts of Yugoslav civil law system (e.g. law of obligations).

Since its independence, Kosovo started to draft a Civil Code with the assistance of international projects. The draft contained five books:
- General part.
- Obligations.
- Property.
- Family
- Inheritance.

It followed Central-European tradition, but these efforts were abandoned to be replaced by single laws covering the above topics. These laws currently are:

- Law on Obligations No. 04/L-077.

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5 This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.
6 This law was drafted with the assistance of GIZ and laid down the essential rules for obligations and contracting.
In addition to these basic laws, numerous special civil laws have been passed (e.g. several laws dealing with property rights transfer and registration and the cadastre). An in-depth analysis of laws and regulations in this field is the initial phase of this Project.

The major problem with this solution is the lack of coherence and harmonisation among them which could be resolved by reconciliation and codification containing also general principles.

### 2.1.2 Need for intervention

As opposed to many European countries, Kosovo, due to historical developments, has embarked on a road of adding laws and regulations one by one, as needs have occurred and/or proposals have been made by international administrations, donors, and projects. As a result, we find a patchwork of (internally and externally) inconsistent and incomplete legislation which has to be remedied according to the demands of EU legislation and standards.

Due to the fact that after the Declaration of Independence of Kosovo, UNMIK and various NGOs entered the country to support its institutional and legal build-up, different legal concepts and laws based on such concepts were proposed and implemented. As a result, the legal landscape in the Civil Code legislation is to a large degree fragmented and heterogeneous in terms of legal concepts and tradition.

Even more unsatisfactory is the situation with the property rights system which was called in an OSCE report in 2009 as “complicated and seemingly impenetrable”. USAID in 2011 confirmed that view by noting that “the current institutional work is not designed to meet these property challenges in an efficient and effective manner”. A specific problem is the problem for women in the field of property rights. Other important issues in the property sector are public ownership, social ownership, privatisation, property registration, the status of construction land, access to cadastral records, etc.

Furthermore, as from the beginning no governing legal principle was introduced, proposals for legal laws and solutions to problems were presented on the basis of both the European civil law tradition as well as the Anglo-Saxon common law. This has created conflicting legal structures, solutions and opinions which need to be resolved through the drafting of a new Civil Code and property related legislation.

The need for intervention with the support of this Project is also reinforced by:

- European Convention on Human Rights (ECHR) which outlines under Article 1, Protocol 1, “the right to peaceful enjoyment of possession”,
- The standard of legal certainty as recognised both under EU law as well as the ECHR\(^7\),
- economic development which is a necessity – given the present status of the economy – for further sustainable development of Kosovo, and

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\(^7\) Legal certainty is a fundamental quality of the legal order and a central requirement for the rule of law. The concept of legal certainty is established in all European legal systems and has been recognised as one of the general principles of EU law by the European Court of Justice since the 1960s. As a general principle in EU law, it means that the law must be certain, in that it is clear and precise, and its legal implications foreseeable. The standard of legal certainty is also set by the European Court of Human Rights, which “requires that all law, whether written or unwritten, be sufficiently precise to allow the citizen – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail”.
social justice and fairness.

The codification of the essential civil law in a Civil Code provides a ‘roof’ under which, subsequently, additional civil laws systematically can be organised and synchronised. The Civil Code shall provide the basis for the legal framework of a property regime in the centre of which are secure ownership rights with all consequences for adherence to human rights, economic and social development of Kosovo.

2.1.3 Challenges

The ToR point out to three major problem areas:
- Complexity of the Kosovo legal framework.
- Lack of legal continuation due to historical developments.
- Similarity of goals of this project and the USAID Programme on property rights which requires strict and detailed coordination without losing the defined goal of this project.

Moreover, it has to be stated that both previous projects, as well as ongoing and planned projects, might have different or specially cut out aims clouding the path to a comprehensive, clear and unified goal.

A further concern is that the Office of the Property Rights Coordinator located within the Prime Minister’s Office, which is one of the main partners for the implementation of the CCPR Project, currently is understaffed and not supported by an adequate budget which might lead to unsatisfactory efficiency in the cooperation with this Stakeholder.

2.1.4 Relevant projects

As outlined under Component A further below, it is important to study the experience and the aims of past, ongoing and envisaged projects in order to use synergy effects and avoid redundancies and conflicts and to arrange for coordination and cooperation with other donors and projects.

A list of most relevant projects (for coordination and cooperation), past, ongoing and envisaged, is outlined in Annex 1. Among the projects listed thereunder, the most important ones for the purpose of the CCPR Project are, in addition to the USAID Property Rights Programme, the BMZ-funded project supporting land management and cadastre (again a project implemented by GIZ, still ongoing), the BMZ-funded Legal Reform Project (also implemented by GIZ, still ongoing), the USAID Contract Law Enforcement Program, etc.

Also important are those projects which supported the development of a Civil Code (GIZ 2003-2004, which, unfortunately was not accepted for reasons beyond the execution of the project itself).

2.1.4.1 The USAID Property Rights Program (PRP)

The overall goal of the USAID Property Rights Programme (PRP) is to improve the property rights regime in Kosovo, to strengthen the rule of law, and increase economic growth and investment. The PRP will achieve this goal by focusing on four objectives: (1) better coordination and setting of policy priorities in the area of property rights in close cooperation with the relevant stakeholders; (2) improved court processes related to property claims; (3) enhanced ability for women to exercise their property rights in practice; and (4) greater access to information and understanding of property rights.
Achieving all four objectives will require close coordination and collaboration with appropriate Kosovo public and private sector counterparts and Beneficiary, as well as other donors. In implementing these objectives, the PRP must closely coordinate and consult with all the relevant donors, and their implementing partners, in particular the European Commission in Kosovo and the World Bank.

Please refer to Chapter 3 below for more details on coordination activities performed during the Inception Phase.

2.1.4.2 Advice to Legal Reform

“Advice to Legal Reform” (2009-2014) is a BMZ-funded project implemented by GIZ aimed at improving the development of draft laws for legislative procedures in line with the Kosovo constitution and EU legal framework. The project has supported the legal drafting process, including drafting/improvement of laws and regulations of public administration to increase judicial efficiency with an emphasis on Regulatory Impact Assessment (RIA). Furthermore, it has been involved in the drafting of new legislation with particular drafting, collecting and commenting civil laws as a preparation for the future development of a comprehensive Civil Code in line with EU acquis. The scope of the project includes supporting a MOJ Working Group on property rights and supporting a Socio-Legal Study and Survey on Women’s Rights on Land and Immovable Property. Both the Working Group on property law and the survey on women’s property rights will be used by the CCPR Project as a resource and will be taken into account in the implementation of activities.

2.1.4.3 Land Management/Cadastre

BMZ is also funding the ‘Land Management/Cadastre’ project (2008-2015) being implemented by GIZ. The objective of this project is to strengthen the legal security of land and housing ownership by improving the processes and data quality in line with the EU best practices. Amongst the various services provided thus far, the project has: supported the reform of the national legal framework (including the execution of a high-level conference on the “Role of Cadastre and Property Titles in a Sustainable Economic Development”); organised workshops on “The legislation in force concerning property rights and gender equality in Kosovo” in pilot Municipal Cadastral Offices; drafted of “Case Studies of Cadastre Maintenance”; and, supported 4 Pilot Municipal Cadastral Offices (Pristina, Mitrovica, Gracanica and Hani i Elezit) through on the job trainings. The task of the current phase was to perform an analysis of the working manners and processes in the pilot municipalities for the purpose of amending and re-drafting the country-wide regulations in line with the EU acquis so that working processes and the data in the land registers and cadastres are improved and correspond to the applicable EU-standards.

2.1.4.4 The USAID Contract Law Enforcement (CLE) Program

The USAID Contract Law Enforcement (CLE) Program is a three year program, which started on May 2013 and is projected to run until April 2016. The CLE program serves to improve the rule of law and create a better business environment for economic development and investment. As such, the program is built around two strategic goals: 1) assisting Kosovo institutions to improve the enforcement of civil judgments while dramatically reducing the backlog of enforcement cases in the Kosovo court system, and 2) assisting Kosovo in developing and strengthening its contract and commercial law framework and systems, including mediation.

1) Improved Enforcement of Judgments and Backlog Reduction

The CLE program supports the Kosovo Judicial Council and the courts to improve management of judgment case load and increase the efficiency of enforcement actions. The program works
closely with court enforcement personnel to place greater emphasis on performing enforcement against debtor bank accounts as opposed to seizure and auction of movable property. Currently, the court system has more than 200,000 unenforced judgments. The CLE program and the Kosovo Judicial Council have set a goal of effectively eliminating the backlog by 2016. The program supports the Ministry of Justice to implement the Law on Enforcement Procedures, including the introduction of a Private Enforcement Agent System.

2) Strengthened Contract and Commercial Law Framework and Systems Including ADR Mechanisms

The CLE program works closely with the Kosovo business community to improve knowledge and understanding of the importance of using written contracts and utilising alternative dispute resolution (ADR) mechanisms such mediation and arbitration. The program has developed a number of Standard Form Contracts with explanatory notes and legal commentary, and conducts an ongoing series of roundtables with the business community throughout Kosovo.

The CLE Program is supporting the Ministry of Trade and Industry in drafting the new law on bankruptcy. In addition, the Program is currently finalising the drafting of six regulations for the implementation of the new law on obligations.
3 ACTIVITIES DURING THE INCEPTION PHASE

During the Inception Phase the following activities were undertaken:

3.1 Establishment of project office

Office accommodation for the project team was made available shortly after the project mobilisation date in order to ensure the smooth running from the beginning of the CCPR Project. Telephone and computer connections were provided as well.

Office Location:
Str. Mother Teresa No. 34/3, 2nd floor, 10000 Pristina, Kosovo.
Tel.: +381 (0)38 223 138

3.2 Recruitment of long term support staff and initial selection of NKEs

Office Manager (2 years), Deputy Project Director (2 years), Translator-Interpreter/Admin Assistant (2 years).

Short term staff, both international and local/regional, will be employed as and when required. During the Inception Phase an initial overview has been made of the short term expert profiles and related inputs, and the recruitment process has commenced (mainly for Activities B1/B2 and C1/C2). It is anticipated that to meet project needs during the immediate implementation period, appointments of the first rounds of NKEs for both the Civil Code and the Property Rights Components will have been made within the 2nd month of project operation.

3.3 Kick-off meeting with the Contracting Authority

An initial meeting between the Contractor and the European Union Office in Pristina (EUO) was held on 2 July 2014 at the EUO premises. Regular weekly meetings/contacts have already been instituted between the Team Leader on behalf of the Contractor (project management) and the Task Manager on behalf of the EUO. No separate reports are envisaged for this, but if there are major issues to be discussed, relevant papers will be drafted. A public kick-off event with the participation of the Minister of Justice will be held in the immediate post-inception period, namely on 9th October 2014.

3.4 Establishment of contacts with the Beneficiary and other stakeholders

The Consultant has organised several meetings to date with senior personnel from the Ministry of Justice (MoJ). Upon request of the CCPR Project, the MoJ appointed two staff as Focal Points for the purposes of project implementation: (1) Ms. Selvije Elezaj, Head of Division for Policy Coordination, and (2) Ms. Anita Çavdarbasha, Legal Officer from the MoJ Legal Department, who shall serve as the first points of contact in the communications with the project team.

Additional meetings have been held with the Ministry of Internal Affairs, Prime Minister’s Office, KPA, PAK, OSCE, GIZ, as well as with other key stakeholders and related projects of external donors (notaries, banks, etc.), to present the CCPR Project and discuss regarding possible ways of cooperation. A list of all meetings is included in Annex 2.
3.5 Donor coordination and overall strategy

The ToR requires the CCPR Project to closely coordinate with all the relevant donors, and their implementing partners, and in particular with the USAID Program on Property Rights (PRP).

The overall goal of the USAID Property Rights Programme (PRP) is to improve the property rights regime in Kosovo, to strengthen the rule of law, and increase economic growth and investment. The PRP will achieve this goal by focusing on four objectives: (1) better coordination and setting of policy priorities in the area of property rights in close cooperation with the relevant stakeholders; (2) improved court processes related to property claims; (3) enhanced ability for women to exercise their property rights in practice; and (4) greater access to information and understanding of property rights.

An area where coordination and cooperation with PRP is likely to be required is Objective 1: Better Coordination and Policy Priorities. This Objective addresses the (1) development challenges related to the need for a coordinated vision and strategy for the property rights regime in Kosovo; (2) the lack of an appropriate institutional structure to lead and implement the agreed upon reforms; and (3) the need for harmonised and high quality primary and secondary legislation.

In this context, PRP is expected to examine the quality of the legislation and identify areas needing revision, strengthening and/or harmonisation. However, as specified in its own terms of reference, i.e. the Statement of Work, the PRP must coordinate closely with the European Union Office in Kosovo (EUO) to identify gaps and inconsistencies in the property rights legislation, by focusing on those laws critical for implementing the program such as the rights of women and minority communities.

Another area eligible for close cooperation is Objective 3: Enhanced women’s rights to use property in practice. Under this objective there are potential overlaps between the two projects. PRP is committed to improving laws related to women’s ownership and inheritance rights. According to its Work Plan, PRP is committed to “conduct an in depth analysis of the legislative gaps and problems related to women’s rights”. This may potentially impact the CCPR project both in the Civil Code and property rights components.

It is also worth mentioning Objective 4: “Improved Communication, Access to Information and Understanding of Property Rights”, where PRP is expected to identify gaps and recommend solutions in order to improve and streamline the process related to property transactions, ownership titles and access to information and services. In the PRP’s Work Plan, this objective is addressed mostly at Municipality level. PRP will address the lack of reliable and efficient business processes to ensure that courts and citizens have ready access to documents and services required to evidence and then transact property rights. There is an emphasis on the need of Courts and Municipalities to have ready access to cadastral records, and involves other legal practitioners as well such as notaries. Access to cadastral records in MCOs is indeed of great interest to the CCPR Project as well.

Based on the foregoing, a first introductory meeting was held on 3 July 2014 with the USAID Country Manager and the Chief of Party of PRP. The Team Leader and KE 2 attended the meeting on behalf of the CCPR Project. The EUO Task Manager attended the meeting as well. The respective purpose and objectives – partly overlapping, especially in the area of property rights – of the two projects were thoroughly discussed. Issues of coordination and cooperation were also preliminarily addressed.

On 23 July 2014, a second meeting was organised with PRP to discuss further about coordination and cooperation between the two projects. The whole team of long term
experts of the PRP was introduced to the project team. The Team Leader and KE 2 attended the meeting on behalf of the CCPR Project. During the meeting, it was agreed that the Team Leader of the CCPR Project and the Chief of Party of the PRP would exchange the respective work plans and come back with comments, if any. The two project teams also agreed to meet again after the respective work plans had been exchanged and reviewed. PRP also offered to assist the CCPR Project in the compilation of property related legislation in Kosovo. During the meeting, it was reiterated that the CCPR Project should take the lead in drafting/amending primary legislation.

Following further contacts between the two respective project managers, on 29 July 2014 a common understanding was reached that a joint Work Plan would not be practical, whereas a joint commitment would seem very reasonable. It is believed that a full common Work Plan would not be advisable neither feasible due to the complexity of the two projects, and of the CCPR project in particular, which runs in parallel two very wide thematic components, the only-partially overlapping objectives of the two projects (as the CCPR Project deals not only with property rights but also with the Civil Code, while PRP places a strong emphasis on property-related court proceedings and municipalities, which are beyond the scope of the CCPR Project), as well as the different time frame (2 years only for the CCPR, whilst PRP will last 4 years).

The Team Leader of CCPR and the Chief of Party of PRP and their teams met again on 4 August 2014 in order to reach a joint commitment acceptable to both parties. In general, it was agreed that PRP would assist the CCPR Project in the compilation of applicable legislation in the property rights sector. However, the CCPR Project would share with PRP the responsibility of identifying gaps and shortcomings in the property related legislation and proposing practical solutions on how to address those gaps and shortcomings. As foreseen by its planning documents, PRP would focus on laws/issues which affect the rights of women and/or minority communities.

A further meeting was held on 21 August 2014 to better define the terms of cooperation and coordination between the two projects and wrap-up all discussions. This meeting was attended by the respective project leaders, as well as USAID and EUO representatives. During the meeting it was agreed that the best way forward to avoid overlapping, redundancies and inconsistencies, as well as to prevent conflicts, stimulate synergy effects, increase complementarity of projects, and ultimately optimise the results of both projects, would be the signing of an ad-hoc Memorandum of Understanding (MoU) between the projects.

A draft MOU was discussed by the respective parties on 26 August 2014. The draft MOU is in the process of being finalised and signed by both parties. The MOU is attached to this Inception report as Annex 9. The MOU will facilitate, to the largest extent possible, the reach of a common understanding and agreement on the ways of reforming the property rights sector. In summary, the MOU provides that:

1. The drafting of the “overall plan for reforming the property law” as referred to under Activity C5 of this Inception report shall be the responsibility of the CCPR Project, and the plan will provide the basis for the analysis of the policy and legal framework of the National Strategy on Property Rights. However, the PRP will also contribute in the drafting process by providing inputs. In particular, the PRP will assist in the identification of gaps and shortcomings of the legal framework on property rights, focusing on laws and/or issues which affect the property rights of women and minority communities.

2. The PRP will additionally direct its attention to identifying constraints and obstacles faced by the courts and/or the parties to proceedings related to property cases, and will look for ways to revise procedures and practices to improve the court system with regard to property rights. By focusing on judicial proceedings,
the PRP will supplement the CCPR Project's assessment of existing property related legislation in relation to its practical application in courts.

In the process of drafting the plan, the CCPR Project will focus on the legal and policy dimensions of the existing problems affecting property rights in Kosovo, whereas the socio-economic, cultural, behavioural and historical aspects of law implementation and enforcement problems will be addressed by the PRP, which may devote specific resources to capacity building interventions in this field.

3.6 Defining the project's scope in the Civil Code and property rights sectors.

During the Inception Phase certain issues relating to the need to define the Civil Code's concept and to determine the scope of project activities under the ToR in the area of property rights, were thoroughly discussed, clarified and agreed with the Contracting Authority and the Beneficiary. Such issues are elaborated more in detail in Chapter 4.

3.7 Development of the Inception Report

The Team Leader, in consultation with KE 2 and KE 3, following an in-depth review and analysis of the ToR and technical proposal on the time allocations for Senior and Junior short term experts (local, regional or international), has made appropriate adjustments to the original inputs.
4 UNDERSTANDING OF THE TOR

4.1 Defining the Civil Code’s concept

Given the extensiveness of the civil law sector, the codification of a Civil Code poses a definition problem that needs to be addressed before activities can be planned and budget allocated. As foreseen in the ToR, initial efforts of the project team were directed towards identifying with the Beneficiary which areas of law should be covered by the codification (ToR, Activity 02, p. 18).

A memorandum outlining the project team’s proposed approach to the scope of the Civil Code was prepared, discussed and delivered to the Beneficiary on the meeting held on 10 July 2014. This memorandum identified the areas of civil law and property rights which should be the subject matter of the intervention and determine the scope of project activities.

As proposed by the project team, it was agreed with the Beneficiary (email of 17 July) that the Civil Code would include only the main areas of civil law which have been traditionally codified across European countries as part of a Civil Code (i.e. Family Law, Inheritance Law, Law of Obligations, and Property Law). However, it was also pointed out that some other areas of law may need to be included as well once the thematic working groups have been established. This is, for instance, the case of the Law of Persons.

The memorandum on the proposed focus of the Civil Code and the response email of the MoJ are altogether attached to this Inception Report as Annex 3.

4.2 Interpreting the scope of activities as regards property rights

Besides the need to define the content of the Civil Code’s concept, the CCPR Project raises additional questions with regard to property rights. According to the ToR, the major expected results are meant to be as follows:

- Following a comprehensive analysis of existing problems over property rights, an overall plan for reforming the Civil Code and property rights related legislation is developed.
- A comprehensive Civil Code for Kosovo is drafted.

While it is clear that the CCPR Project shall (1) provide a comprehensive analysis of existing problems over property rights, (2) produce an overall plan for reforming the property rights sector in Kosovo and providing the basis for the analysis of the policy and legal framework of the National Strategy on Property Rights, and (3) support the drafting/redrafting of the law on property rights (i.e. private property law) as an integral part of the Civil Code, the scope of project intervention is less straightforward as regards legislative drafting, especially in the area of property legislation other than general private property laws.

Under Section 3.3 (Results) of the ToR, Result 1 (property rights) refers to the provision of a overall plan in relation to property related legislation, whereas Result 2 (Civil Code) is couched in different terms, namely “A comprehensive civil code for Kosovo is drafted.” Furthermore, Section 3.2 (Purpose) carefully choses the words “start the process of improving” the regulatory framework, rather than specifically requesting the drafting of all property legislation. However, sub-section 1.9 provides that: “Reformed property legislation is drafted, accepted by the Ministry of Justice and ready to be proposed by the Parliament.” This sub-section requires contextual interpretation in light of the overall ToR, and if necessary it should be narrowed down in order not to conflict with the Purpose and Results of the CCPR Project. The ToR should also be interpreted in a way that the CCPR Project is realistically enabled to deliver sustainable results.

Following preliminary consultations with the Contracting Authority, which have focused on the purpose and results of the CCPR Project as well as on its specific timeframe and resources, it
was initially proposed that the CCPR Project would aim to support, within available resources and without prejudice to the codification of a Civil Code, the drafting and/or amendment of a minimum\(^8\) of three relevant laws/issues in the property rights sector, in addition to reforming the general laws on private property rights (which are expected to be an integral part of the Civil Code).

However, as the actual identification of laws to be drafted and/or amended will depend considerably on the findings of the collection and assessment of the legal framework and case law on property rights (Activities C1/C2/C3), which should highlight gaps, shortcoming and inconsistencies, and will also be very much influenced by the policy priorities of the new government of Kosovo, the project team, after thorough discussions, has agreed with the Beneficiary and the Contracting Authority not to identify in strict and definitive terms the laws to be drafted and/or amended but to only include in this Inception Report a non-exhaustive and non-binding list of optional law/issues, among which a well-informed choice of a minimum of three relevant issues/laws will be made at a later stage as soon as more information is available as to the impacts of the existing legislation and implementing practice as well as the policy priority setup of the new government.

Based on preliminary consultations with the Beneficiary, the list of potential issues which may be considered as subject of legislative drafting and/or amendment is as follows:

i. Regulating/changing the legal status of socially-owned construction land (i.e. transferring the social ownership into the ownership of private individuals, or transforming it into publicly-owned property if considered of vital interest for the state

ii. Definition and administration of publicly-owned property

iii. Étage property (i.e. co-ownership by floor)

iv. Foreigners’ rights towards immovable property.

4.3 Assumptions and risks

Assumptions

The basis assumption for achieving the planned results of the CCPR Project is

- good will co-operation with and commitment for such co-operation by the Beneficiary and Stakeholders, i.e. the judicial authorities, and
- cooperation and coordination with donors and other projects.

Furthermore, certain key requirements have been met at the start of the CCPR Project. These are on the strategic and political level:

- Continuous government commitment to the European integration process.
- Necessary policy decisions to initiate the drafting/revision of legislation are made in a timely fashion.
- Commitment of the MoJ to ensure active political support not only to the codification of the Civil Code, but to the overall reform process of the property rights regime.
- Willingness of the MoJ to take full ownership and responsibilities during the entire life of the CCPR Project.

We can fairly assume that the Government of Kosovo is aware of the need to continue and to improve the process of approximation to the EU and, thus, to be fully committed to make all necessary decisions for introduce Civil Code and property rights legislation with the support of this Project.

\(^8\) It is to be noted, however, than more than three laws/issues may only be considered if there are spare resources (man-days) after completion of the three laws/issues that will be chosen as a priority.
As a consequence, the Government of Kosovo will take all necessary steps to implement these decisions on an operational level, such as:

- Adequate budget is made available by the Government of Kosovo to support the large overall aim of the CCPR Project.
- Sufficient human resources are allocated to achieve project outputs and the senior management is committed to the necessary reforms.
- Effective communication and active participation of all stakeholders.
- Readiness to increase coordination with donors and to improve co-financing planning.
- Decision of the Kosovo Government to entrust the MoJ with an expanded mandate over the revision of the property rights regime.

Furthermore, to secure smooth operations, we can assume that the Government on the functional level, will provide for the following:

- Assignment of staff from side of the involved ministries and other stakeholders for the entire duration of the CCPR Project.
- The Property Rights Coordinator has a clear mandate and sufficient budget.
- At the municipal level, a pre-condition will be to gain the explicit collaboration of mayors and relevant departments to ensure full ownership of reforms at the local level.

Given the strong desire of the Government of Kosovo to meet the requirements of the *acquis* and to proceed with the European integration process, it can be fairly assumed that the above specific requirements will be met on time. Furthermore, the CCPR Project Team in the course of project implementation will undertake every effort to make sure that these assumptions remain valid by continuous intervention.

Whereas in the issues listed above, no major risks can be assumed, there are risks in certain areas which have to be evaluated and mitigated in order not to endanger the outcome of the CCPR Project. To achieve collaboration on the municipal level with mayors might be difficult and will require constant interaction by the project Team with higher authorities. With regard to coordination and cooperation with other donors and projects, there might arise risk situations which need to be evaluated and overcome as indicated below.

**Risks**

The CCPR Project will face some risks which – overall – we believe are relatively small and manageable as explained below.

<table>
<thead>
<tr>
<th>Risks</th>
<th>Evaluation and mitigation of risks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project kick-off during the holiday season.</td>
<td>As a result of the summer recess, project implementation may be slowed down and the entire project may be delayed due to absence of key actors within the Beneficiary and other stakeholders, as well as the unavailability of NKEs. We will try to mitigate as much as possible this risk by planning well in advance to the maximum extent possible.</td>
</tr>
<tr>
<td>General election related issues during the last semester of 2014.</td>
<td>We do not believe that the outcome of the last general parliamentary election in June will reduce the ambition for legal reforms in the field of Civil Code and property rights by the Government of Kosovo. Any potential problems after the new Government is finally established can be resolved relatively easily by demonstrating the benefits of the overall goals</td>
</tr>
</tbody>
</table>
of the reforms, as all political parties – so far – have underlined their will for European integration and, thus, it is reasonable to expect further legal approximation after the election. However, as the uncertainty of the political situation is likely not to be resolved by the end of the summer (and will perhaps continue beyond it), the responsiveness of local institutions in taking key decisions which are relevant for the project may be affected and the project may face delays in implementation.

<table>
<thead>
<tr>
<th>Lack of coordination among donors.</th>
<th>This risk exists, but we believe that we can overcome it by intensive working with other donors and projects as explained in the Activities of Component A.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lack of staff.</td>
<td>It has been pointed out in ToR as well as in the IPA Assessment Report that various offices of the Stakeholders of this Project suffer from a lack of staff and the funding for those Activities. The CCPR Project will make strong efforts to convince the Kosovo Government that these shortcomings endanger the outcome of the CCPR Project and, thus, have to be removed.</td>
</tr>
<tr>
<td>Lack of adequate cooperation among different competent institutions.</td>
<td>We believe that this particular risk is significant. We will make every effort to convince the respective institutions that future development of Kosovo, in particular the approximation to EU, is dependent on the positive outcome of the CCPR Project which requires intensive cooperation with the CCPR Project as well as among the institutions involved in the process and an intensive knowledge transfer with regard to the property rights regime through the CCPR Project.</td>
</tr>
<tr>
<td>Collaboration on the municipal level with mayors and other departments to achieve full ownership of reforms at the local level.</td>
<td>This issue poses significant risks as the CCPR Project has to deal with a number of very independent minded local agencies which might not have a sufficient understanding of the necessities of the project work and its goals. We will attempt to convince the involved bodies by model meetings and discussions involving also citizens and by making public the results of such meetings which, probably, will require the approval of higher authorities.</td>
</tr>
</tbody>
</table>
5 PROJECT PLANNING

5.1 Planning for the whole duration of the CCPR Project

5.1.1 Approach

Given the complex situation of the fragmented and diverse Kosovo legislation, we are convinced that good and acceptable results can only be achieved by close cooperation with the Beneficiary and Stakeholders – the Ministry of Justice and other relevant government agencies – as well as through coordination with other projects and donors operating in this field, in particular with the USAID Programme.

In our Approach – i.e. how we want to execute the Activities of our project work – we understand as “Stakeholders”:

- the Ministry of Justice (as the main Beneficiary of the CCPR Project),
- the Property Rights Coordinator (PRC) at the Prime Minister’s Office (PMO),
- Working Group (on Property) and Drafting Commissions,
- (Line) Ministries (Ministry of Internal Affairs, Ministry for Environment and Spatial Planning, Ministry for Infrastructure, Ministry for Trade and Industry, etc.),
- Private Sector Stakeholders (e.g. banks), as the property rights legislation is crucial for the economic development of Kosovo as shown elsewhere in this proposal.

The inclusion of all Stakeholders in a broad public debate regarding legislative changes and their impact will be fostered throughout the lifetime of the CCPR Project (and beyond).

We also want to establish a broad and inclusive basis for our analysis and review of the Civil Code and property rights legislation in order to ensure a comprehensive, acceptable, sustainable and practical outcome of the project work, i.e. the drafting of Civil Code and property rights legislation for the benefit of Kosovo. Thus, it is important to focus also on the role of the private sector, the practitioners of law, i.e. notaries and attorneys, the financial institutions, etc.

Furthermore, the practical situation “on the ground” will be studied through interviews and observation of practice in the field of application of civil law and handling of property rights issues by the authorities in order to complement the theoretical analysis of laws and regulations.

In our Approach, we also want to highlight the importance of the project outcomes for the social and economic conditions of Kosovo.

The main objectives in the final stage of the CCPR Project are to present drafts/proposals for a Civil Code and property rights laws. In the Activities of Components B and C we outline the single steps in this process. An overview of the complex legislative process as it is structured in Kosovo at this time is given in Annex 4.

5.1.2 Structure of project work

The structure of project work will closely follow the above mentioned approach and the three Components as outlined by the Tender Dossier, Annex III:

- Component A - Donors coordination and overall strategy,
- Component B - Civil Code, and
- Component C - Property rights.

The aim of Component A is to use the experience of past and ongoing projects and to cooperate and coordinate with them in order to avoid redundancy and conflicts about overall goals. While
coordination with other donors will run through the entirety of the CCPR Project (Activity A3), the Inception Phase – which is Activity 1 of this Component – has served to identify the main donors and projects. Since its declaration of independence, various donors and projects have assisted the Government of Kosovo in building-up the capacity of state functions.

The aim of this Component B is designed to establish the process for drafting a Civil Code, using the expertise of previous projects, European standards and the best practices from the region. In order to establish a clear reference to European standards at the on-set of this Component, ‘traditions and models’ – as required by the ToR – the structures of the French, German, Italian, Austrian and Swiss Civil Codes are presented in Annex 5 as benchmarks for the work on drafting a future Kosovo Civil Code. Since there is not one-size fits all structure, we will bear in mind all the existing models, ensuring that the structure developed for Kosovo is the one most suitable for its specific characteristics and needs. The laws to be codified in the Civil Code include but are not limited to Family law, Law of Inheritance, Law of Obligations/Contract Law as well as Property Law. Other areas of law such as the Law of Persons may be included as well.

Component C describes the process for analysing existing legislation and achieving a proposal for a property rights regime in the overall context of the Civil Code and sectoral legislation. This component will also start the process for drafting property rights legislation by relying on cooperation with other projects, using European standards and the experience of countries in the region. This process will cover the following: (1) general private property law, to be codified as an integral part of the Civil Code, and (2) drafting and/or amendment of a minimum of three property-related laws/issues (other than general private property law), to be identified and prioritised for legislative drafting jointly with the Beneficiary and the Contracting Authority in the course of project implementation. For more details, please refer above to Chapter 4.2, p. 20.

In terms of the legislative basis for private property rights, the main laws – which have to be evaluated under this Component – are:

- Law on Property and Other Real Rights
- Law on Cadastre
- Law on the Establishment of an Immovable Property Rights Register
- Law on Transfer of Real Property
- Various amending laws and subsidiary legislation.

While the general regulation of private property can and should form an integral part of the Civil Code, it may not be advisable or practicable to include in the Civil Code special property rights legislation which is related to dispute settlement, and therefore more procedural in nature (e.g. KPA-related legislation). Public property should as well not be part of the Civil Code, which is by definition a compilation of laws governing the relationships between private individuals.

In order to arrive at a proposal for the relevant provisions of property rights legislation (either within the framework of the Civil Code or in the context of special laws) we will work with the designated staff, the Working Group on Property Rights and other thematic working groups intensively for the formulation of such a proposal in informal and formal sessions.

We will provide advice under this component and will present this to MoJ and the designated staff in the form of (1) written reports and proposals, and (2) draft laws and/or amendments. To the designated staff and the Working Group on Property and other thematic working groups to be established we will also provide systematic counselling (on request as well as triggered by an event) and formal training on relevant issues.

Coherence across the whole legal framework has been identified as a crucial factor for the further development of any private law activity in Kosovo. Against this background, the CCPR Project will structure and organise its work in a way which takes fully into account the fact that the Civil Code through its generalities predetermines the contents of property rights legislation to a substantial extent. The development of the legal framework, therefore, has to be organised from the general towards the special parts so that a certain (chronological) priority will be given
to the development of the Civil Code. Such an approach, however, does not exclude that the Activities of Components B and C are developed and implemented in parallel as long as it is guaranteed that the regulations of the Property Rights Component are developed in the light of the decisions taken with regard to the codification of the Civil Code.

The Activities of the two Components B and C can graphically be depicted as follows:

![Graphical representation of Activities]

The graph above shows the systematic development of the project work from the stage of collection of legal documents to the last stage of implementation, the formulation of legal texts for the Civil Code and the property rights legislation. The phasing of the Activities emphasises the focus of the project work; more than half of the Activities concentrate on the formulation process for Civil Code and property rights legislation.

5.1.3 Project planning by components

Due to the structure of the project work, planning for the entire duration of the CCPR Project is set forth in the Work Plan by component (see Annex 6). For each component (A, B and C), Annex 6 presents the relevant Activities (as listed in the ToR), the Input which is needed to perform the Activities, the Approach which is taken in executing those Activities, as well as the expected Outputs/Results we want to achieve in a successful implementation of the CCPR Project. The Timetable of Activities and related Project Milestones are enclosed in Annex 7.

5.2 Planning for the next reporting period

The next reporting period is until submission of the First Quarterly Report (15 November 2014). The main planned activities to be continued, completed or initiated in the next reporting period...
(mid-August, September, October and mid-November 2014) are as follows (per project component):

- **Activities to be continued in the next reporting period:**
  a) Component A – Donors coordination and overall strategy
     - Assessment of experience of past and ongoing projects of various donors
     - Coordination and cooperation with other donors and projects

- **Activities to be completed in the next reporting period:**
  b) Component B – Civil Code
     - Select and hire NKEs for Activity B1
     - Provide technical support to the MoJ and other relevant Stakeholders to collect relevant laws and case law in the area of Civil Code (Activity B1)
  c) Component C – Property rights
     - Select and hire NKEs for Activity C1
     - Collecting relevant laws and case law in the area of property law (Activity C1)
  d) Additional activities:
     - (Inception): organise and hold a visibility event in the end of September 2014

- **Activities to be initiated in the next reporting period:**
  e) Component B – Civil Code
     - Select and hire NKEs for Activities B2 and B3
     - Undertake an impact assessment of existing legislation in Civil Code related areas (Activity B2)
     - Undertake a legal assessment in the light of European legal standards and best practice to identify inconsistencies and gaps (Activity B3)
  f) Component C – Property rights
     - Select and hire NKEs for Activities C2 and C3
     - Undertake an impact assessment of existing legislation on property law (Activity C2)
     - Undertake a legal assessment in the light of European legal standards and best practice to identify inconsistencies and gaps (Activity C3)
  g) Additional activities:
     - (Project Management): Members of the Project Steering Committee (PSC) will be selected and first meeting will be held.

### 5.3 Implementation arrangements

Implementation of the CCPR Project is structured in a considerable number of activities, grouped into 3 components, as described above in Chapter 4. The CCPR Project will be implemented by 3 Key Experts, up to 59 Non-key Experts (both local and international) and project support staff.
The project’s Work Plan (distribution of human resources over activities, i.e. planned resource inputs, together with approaches and expected outputs) is in Annex 6. The Timetable of Activities (distribution of activities over time) and related project milestones is in Annex 7.

In accordance with the ToR, the CCPR Project shall undertake a legal assessment in the light of European legal standards and best practice to identify inconsistencies and gaps in the Civil Code and property related legislation (Activities B3 and C3 of this Inception Report). Under the same activities, the MoJ shall be requested to designate staff and thematic working groups on Civil Code issues for carrying out tasks of the legislative process (Sub-Activity B.3.4). Similarly, the MoJ shall be requested to designate staff and the Working Group on Property for carrying out the tasks of the legislative process (Sub-Activity C.3.4).

Both Activities B3 and C3 should stretch over project months 6 to 9, notably after the implementation of certain preliminary research and analysis activities, i.e. collecting relevant laws and case law and undertaking an impact assessment of existing legislation (respectively, Activities B1/B2 and C1/C2). However, we propose to commence the process of establishing working groups already in month 3 in order to have all institutional arrangements in place at the earliest convenience for the subsequent implementation of technical assistance activities, such as providing advice to the MoJ on the simplification and harmonisation of existing Civil Code related legislation and property law (Activities B4 and C4), assisting the MoJ in drafting an overall plan of the Civil Code and an overall plan for reforming the property law sector providing the basis for the analysis of the policy and legal framework of the overall Strategy (Activities B5 and C5), and so on. The initial period of project implementation should therefore be used by the MoJ and Project as an opportunity to start selecting and appointing members of the working groups.

We propose to establish three Working Groups as follows:

1. Working Group on Family Law/Law of Inheritance,
2. Working Group on Law of Obligations/Contract Law, and

The Working Group on Family Law/Law of Inheritance will also deal with the Law of Persons.

The MoJ shall decide about the composition of the working groups. As a minimum, the working groups should include legal experts in the three respective areas from the MoJ, the CCPR Project (both KEs and NKEs), other donor funded projects such as the USAID PRP, as well as civil society and private sector members (e.g. representatives from banking associations, lawyers’ bar, the chamber of notaries, financial institutions, etc.). The MoJ may wish to integrate the members of existing working group on property law, totally or in part, into the structure of the Working Group on Property Rights to be established.

We also propose to establish a MoJ Legislative Commission for Civil Code and Property Rights under the umbrella of which the three thematic Working Groups referred to above will operate. The Commission (having final decision-making power) would direct and coordinate the work of the thematic Working Groups and will include representatives from each of the working groups, representatives of legal departments of the MoJ and other relevant line ministers (e.g. Ministry of Internal Affairs), representatives from the Prime Minister Office such as the Property Rights Coordinator and/or the Director of the Legal Office, as well as KEs and/or NKEs from the CCPR Project. The number of members should be even in order for decisions to be taken on the basis of a majority rule.

Final setup of institutional arrangements necessary of the implementation of project activities will be discussed and agreed with the Beneficiary and other stakeholders starting from project month 3.
6 PROJECT MANAGEMENT

In this chapter we want to present:

- the role and position of Beneficiary and Stakeholders, and
- the management structure of the CCPR Project.

6.1 Role and position of Beneficiary and Stakeholders

We believe that the effective communication and cooperation with the main Beneficiary and the Stakeholders is a crucial element for the outcome of the CCPR Project. Thus, we have to understand the roles the Stakeholders have in this process and how we relate and communicate with them. Also, we have to realise and react positively to the potential problem that the Stakeholders and other political actors might not always reach a consensus about key issues and Activities of the CCPR Project.

Reference is made at this point also to the description of the complex legislative process on top of project Activities.

Ministry of Justice

The Ministry of Justice (MoJ) is the main Beneficiary and principal Stakeholder in this Project due to its role in the legislative process, in particular with regard to civil code and property rights related legislation of Kosovo, according to Regulation No. 02/2011 on the Area of Administrative Responsibility of the Office of the Prime Minister and Ministries, Appendix I, Regulation of Rules and Procedures of the Government of Kosovo No. 09/2011. Reference is made to the legal situation as described in the ToR.

The MoJ is in charge for harmonising the laws of of Kosovo with EU standards and to develop international cooperation in this field. A Working Group on Property Issues has been set-up and is charged with the responsibility for providing advice on consolidation, harmonisation and reforming property rights law. This Working Group is the principal interlocutor for implementing the related IPA activities.

Property Rights Coordinator (PRC) at the Office of the Prime Minister (PMO)

A Property Rights Coordinator at the Prime Minister’s Office has been appointed by the Government Decision No. 11/78 of 12 June 2012. The duties and responsibilities of this important function are described in the ToR, which makes this office a main Partner in the realisation of all Activities of the CCPR Project.

Working Groups

As described in the ToR and in the various Activities, the Working Group on Property Rights as well as other thematic Working Groups will be important partners in implementation of the project’s activities and shall provide for a broader participating audience of the project work and for a forum for professional exchange and discussion, as well as formulations, of opinions.

6.2 Management structure

The CCPR Project serves the Ministry of Justice as the main Beneficiary and the Property Rights Coordinator at the Office of the Prime Minister as an important focal point for the implementation of the CCPR Project. In addition, in the process of reforming the Civil Code and the property rights system, several other bodies are involved which is shown on the graph below.
6.3 Project Steering Committee

In accordance with the ToR, and as agreed with the EUO Task Manager, a Project Steering Committee (PSC) shall be established after the approval of this Inception Report to oversee the management and the progress of the CCPR Project. It will be chaired by a representative of the MoJ; the CCPR Project will be represented by one key expert (KE1/Team Leader). EULEX will also be represented in the PSC through one mission member. A representative from the PRP may be invited to sit as an observer. Other members may be invited to participate in the PSC meetings as deemed necessary.

When establishing the PSC consideration should be given to ensuring a smooth implementation of the project activities while at the same time including main stakeholders in these activities. The Consultant should make a proposal for ways to ensure stakeholder involvement and commitment to this project, and while stakeholders may not be included in the PSC, the Consultant should seek other ways of liaising with the stakeholders throughout the CCPR Project (such as through Working Groups or bilateral meetings).

The PSC will meet as required, but at least on a quarterly basis. However, the PSC may decide to hold meetings less frequently than on a quarterly basis. The PSC shall be responsible for the overall coordination, direction and oversight of the CCPR Project and its activities. The PSC shall guide the CCPR Project in achieving its tasks, monitor progress of the CCPR Project activities and ensure timely achievement of results as set out in the ToR.

We will ensure that the PSC is kept informed on all project progress as well as developments affecting project execution. The CCPR Project shall provide for the secretariat of the PSC (preparation and circulation of the agenda, writing and distribution of minutes, etc.). The date of the PSC meeting, the agenda and the documents necessary shall be set and circulated among the interested parties tentatively with a reasonable time in advance.
All PSC decisions related to the CCPR Project will require final endorsement of the Contracting Authority.

The specific rules detailing the rights, obligations and procedures of the Steering Committee (“Rules of Procedure of the Steering Committee”) are attached to this Inception report as Annex 8. These Rules enter into force on the day of their approval, and will be distributed among the Members of the PSC.
7 NON-KEY EXPERTS

In accordance with the TOR the CCPR Project will hire senior and junior ‘Non-key experts’ (NKEs) who will provide an input of a total of 1410 M/Ds (of which 450 M/Ds are senior and 960 are junior NKEs) according to the requirements of the ToR. Out of 450 M/Ds for senior expertise, 165 will be local and regional experts, whereas 285 will be international experts.

Both senior and junior experts will in their majority be fluent in one of the local languages. Our experts will possess good analytical, research, communication and presentation skills; excellent organisational and time management skills. They will hold, as a requirement, a Bachelor or Master degree in an area matching the nature of their assignment. A post-graduate degree in international and comparative legal studies will be considered as an advantage.

Senior experts should have:
- Experience as legal professional, Judge and/or Academic
- Experience in Civil and/or Administrative Law
- Experience in legislative drafting
- At least 15 years of general experience;
- At least 10 years of specific experience in the field.

Junior experts should have:
- Experience as legal professional. Judge and/or Academic
- Experience in Civil Law
- At least 4 years of relevant general experience;
- At least 3 years of specific experience in related areas mentioned above.

As identified in the ToR (p. 25), our NKEs will cover – as a minimum – the following areas:
- expertise in working with similar projects in an EU Member State and/or in the region;
- expertise in comparative legal research and analysis;
- expertise in policy development and legal drafting.

The project team will specifically be assisted by the non-key experts in the following areas of expertise:
- collection and analysis of existing legislation and case law in the area of Civil Code and property rights,
- benchmarking and comparison of existing legislation and case law with European standards and consistency with ECHR,
- codification of Civil Code legislation,
- drafting/amendment of property rights legislation
- organisation of workshops and round tables, training events.

Due to the scarcity of available expertise in specialised areas of civil law such as family and inheritance law, property law, or the law of obligations, the CCPR Project will have to rely on the expertise of a wider range of legal professionals (than legal practitioners and consultants), including but not limited to notaries and law professors. Moreover, as some of the most qualified expertise available in the country is currently employed by EULEX, the CCPR Project may from time to time face the need to recruit local or international experts, especially in the property rights sector, from the EU Rule of Law Mission to Kosovo on a short time basis, with the approval of the Mission.

Furthermore, ToRs will be drafted having in mind that the legal profession is characterised in Kosovo by a relatively low level of specialisation. As a result, local experts contracted on thematic issues will be expected to demonstrate significant skills and expertise in the relevant subject matter area, however in combination with some more generalist experience in the wider civil law sector.
## REPORTING SCHEDULE

<table>
<thead>
<tr>
<th>Report type</th>
<th>Content</th>
<th>Timing or frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inception Report</td>
<td>Analysis of existing situation and work plan for the CCPR Project.</td>
<td>No later than 6 weeks after the start of the implementation.</td>
</tr>
<tr>
<td>Monthly Report</td>
<td>Short listing of implemented activities during the reporting month and envisaging the activities to be implemented during next month.</td>
<td>No later than 2 weeks after the end of each implementation month.</td>
</tr>
<tr>
<td>Quarterly Progress</td>
<td>Short description of progress (technical and financial) including problems encountered; planned activities for the ensuing 6 months accompanied by an invoice and the expenditure verification report.</td>
<td>No later than 1 month after the end of each 3 months implementation period. First Quarterly reporting period starts from the end date of Inception Phase.</td>
</tr>
<tr>
<td>Draft Final Report</td>
<td>Short description of achievements including problems encountered and recommendations</td>
<td>No later than 1 month before the end of the implementation period.</td>
</tr>
<tr>
<td>Final Report</td>
<td>Short description of achievements including problems encountered and recommendations; a final invoice and the financial report accompanied by the expenditure verification report.</td>
<td>Within 1 month of receiving comments on the draft final report from the CCPR Project Manager identified in the contract.</td>
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</tbody>
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9 LIST OF ANNEXES

Annex 1 - List of past, ongoing and future projects relevant to the Project

Annex 2 - List of meetings

Annex 3 - Memorandum on proposed focus of Civil Code

Annex 4 - Legislative process in Kosovo

Annex 5 - Structure of main Civil Codes in Europe

Annex 6 - Work Plan

Annex 7 - Timetable of activities & project milestones

Annex 8 - Rules of Procedure of the Steering Committee

Annex 9 - Memorandum of Understanding between CCPR Project and PRP