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by the Council of Europe

Project against Economic Crime in Kosovo* (PECK)

QUESTIONNAIRE

**on compliance with international standards
in the area of anti-corruption**

CYCLE 1

ECU/PECK-5-2012

* 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.

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NOTE TO AUTHORITIES:

- The authorities should provide comprehensive and detailed answers to each question below, and explain to the fullest extent possible the legislative and institutional framework and/or other measures they have taken to meet each criterion of the international standards.
- In support of the responses to the questionnaire below the authorities should provide copies of legislation and other documents, which are mentioned and/or referenced in the answers to questions.
- Requested statistics should be provided (if available) in the form of a table with an annual breakdown for a period of 3 years.
- When answering questions relating to agency resources please provide detailed information on budget, staffing, structure as well as a comprehensive assessment on the sufficiency of the allocated resources.

1. General

1.1 General information on Kosovo

1.1.1 Please describe the characteristic features of the corruption phenomenon in your jurisdiction (Kosovo), indicating notably its extent, its most common forms and the functions of those persons involved. Describe in particular the extent/perceived extent of corruption in the a) legislature, b) the judiciary, c) the police d) public administration and in e) the political context, at central and local levels. ¹
1.1.2 Is there reason to believe that there is a connection between corruption and organised crime in your jurisdiction in Kosovo? If so, please describe the connection.
1.1.3 Please describe how the media report on issues relating to corruption in Kosovo.
1.1.4 Please describe your authorities' policy with regard to the means put in place to prevent and fight corruption, indicating the principal components of this policy and the priorities defined within its framework and plan of action.
1.1.5 If there is a body (or bodies) in charge of the strategies and/or plans of actions against corruption, please describe its composition and terms of reference as well as its efficiency in practice. Please provide examples of actions taken.
1.1.6 Please describe initiatives of civil society (including non-governmental organisations) for the prevention of/fight against corruption and whether (and if so how) these are linked to the activities of the authorities policies, mechanisms etc. Please also describe briefly the main international actors dealing with anti-corruption assistance and technical cooperation in Kosovo.

¹ In order to clarify the information submitted in response to this question, please provide any statistics that are available in the fields concerned.

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2. *Fundamental safeguards and corruption prevention*

2.1 Separation of powers

Please describe how the separation between legislative, executive and judicial powers is established in Kosovo (Constitution/legislation/other means).
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2.2 The Judiciary – Judges / Prosecutors

2.2.1 Please describe briefly how the court system is organised (types of courts and levels).

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2.2.2 Please indicate whether the prosecution service is part of the judicial branch, executive branch or both.

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2.2.3 Please describe the different categories of judges, indicating: a) whether they are appointed or elected; b) whether various court decisions, depending on their type, are rendered by particular categories/types of judges (please elaborate).
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2.2.4 In what document is the principle of independence of the judiciary/judges enshrined? Please provide the relevant provision(s).
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2.2.5 Please indicate whether the prosecution service is an autonomous institution, what autonomy actually means in this context and how this autonomy is guaranteed.

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2.2.6 Please indicate which individuals or institutions, if any, may give directives in individual cases to judges or prosecutors.
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2.2.7 Please indicate whether judges and prosecutors are elected/appointed for a fixed or indefinite period of time. If they are elected/appointed for a fixed period, provide further details on the length of their mandate, whether it is renewable, what criteria and procedures are used for its renewal and which entity takes such decisions.
2.2.8 Please indicate what persons(s) or entity/entities is/are responsible for: a) the appointment of judges and prosecutors; b) the promotion of judges and prosecutors; c) the mobility (transfer, rotation etc.) of judges and prosecutors; d) the dismissal of judges and prosecutors.
2.2.9 Describe the composition of the entity/entities mentioned under II.2.8, its/their procedures and criteria for taking decisions, as well as whether it is possible to appeal these decisions.
2.2.10 Please describe the procedure(s) and criteria in place to check the integrity/propriety of candidates for the position of judge/prosecutor.
2.2.11 Please indicate the gross annual salary of (i) a professional judge at the beginning of his/her career and (ii) a judge of the highest court. Please provide these figures in absolute numbers and also as a proportion of an average salary in Kosovo. Please also indicate if this salary varies according to the actual function occupied, seniority or a periodic evaluation.
2.2.12 Please indicate the gross annual salary of a prosecutor at the beginning of his/her career and how the salary evolves during his/her career. Please provide these figures in absolute numbers and also as a proportion of an average salary in Kosovo. Indicate if this salary varies according to the actual function occupied, seniority or a periodic evaluation.
2.2.13 Please describe measures in place to ensure the transparency of the judicial process.
2.2.14 a) Please describe the content of ethical principles or codes of ethics/conduct that apply

in respect of judges and prosecutors; b) What are the measures in place to ensure compliance with these standards?
2.2.15 Please describe a) which types of conflicts of interest of judges and prosecutors are regulated; b) mechanisms in place to prevent conflicts of interest; and c) how to resolve them before they arise.
2.2.16 Please describe to what extent judges and prosecutors are prohibited and/or restricted to certain actions such as a) accepting gifts; b) holding posts outside the judiciary; c) being employed in certain posts/functions or engaging in other paid or non-paid activities after exercising a judicial/prosecutorial functions.
2.2.17 a) To what extent are judges and prosecutors obliged to declare assets, income, loans, debts, gifts or any other interests. b) Please describe to what extent information to be declared is also required for a judge's/prosecutor's family or relatives.
2.2.18 a) Please describe the mechanism for controlling declarations assets/income and interests and to what extent the declarations or the procedure is public. b) Please describe enforcement mechanisms in place, their level of independence, working methods and the sanctions available when violations are detected. Please also provide if possible statistics on violations detected and sanctions imposed.
2.2.19 Please describe the training provided to judges and prosecutors on ethics, expected conduct, prevention of corruption and conflicts of interest and related matters. Please provide further details as regards: a) its content (subjects taught); b) its duration, the period during which it takes place (whether it is part of the initial and/or in-service training) and whether it is recurrent; c) whether the training is compulsory or optional.

2.3 Police

(to be applied also in respect of other law enforcement agencies, such as the customs, border police, as appropriate)

2.3.1 Is the police under the responsibility of a particular ministry or other institution? Please
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describe briefly how the police is organised in Kosovo.
2.3.2 Please describe the various categories of police staff and indicate how these are a) selected b) vetted/screened and c) appointed to the various positions in the police hierarchy. Are there any specific criteria that disqualify applicants? If so, please describe.
2.3.3 Please indicate the gross annual salary of police staff at the beginning of the career and how it evolves throughout the career. Please provide these figures in absolute numbers and also as a proportion of an average salary in Kosovo.
2.3.4 Do provisions establishing a system of regular, periodical rotation of staff employed within the police considered vulnerable to corruption exist?
2.3.5 Please indicate which individuals or institutions, if any, may give directives to the police, in which types of matter and under what circumstances. To whom or to which body are police officers accountable in respect of a) general duties, b) criminal investigation?
2.3.6 a) Please describe the content of ethical principles or codes of ethics/conduct that apply in respect of police staff; b) What are the measures in place to ensure compliance with these standards?
2.3.7 Please describe a) which types of conflicts of interest of police staff are regulated; b) mechanisms in place to prevent conflicts of interest; and c) how to resolve them before they arise.
2.3.8 Please describe to what extent police staff are prohibited and/or restricted to certain action such as a) to accept gifts; b) hold posts or employment outside the police; or c) engage in other paid or non-paid activities.
2.3.9 To what extent are police staff, and their relatives, obliged to declare assets; income; loans; debts; gifts; or any other interest and, if so, please describe the mechanism for controlling such declarations and the possible enforcement mechanism and sanctions regarding violations.

2.3.10 Are police staff obliged to report instances of corruption they come across within the police service? Please describe how this is dealt with within the police service. Who or which body would perform such investigations?
2.3.11 Please describe the system of disciplinary proceedings and sanctions within the police. Please also provide any statistics, if available, on such proceedings and sanctions imposed, including criminal proceedings if relevant.
2.3.12 Please describe the training provided to police staff on ethics, expected conduct, prevention of corruption and conflicts of interest and related matters. Provide further details as regards: a) its content (subjects taught); b) its duration, the period during which it takes place (whether it is part of the initial and/or in-service training) and whether it is recurrent; c) whether the training is compulsory or optional.

2.4 Public administration

General scope

2.4.1 Please indicate the legal framework for public administration in Kosovo. Does the constitutional/legal system set basic principles regulating the functioning of the public administration?
2.4.2 Please indicate whether any steps or measures have been taken to simplify administrative procedures, where appropriate, in order to facilitate public access to and use of/participation in relevant procedures
2.4.3 Are there bodies within the public administration specialised in prevention of corruption? How do such bodies cooperate with the law enforcement agencies (police)?
2.4.4 How is the effectiveness of anti-corruption measures targeting public administration

assessed?

Transparency in public administration

2.4.5 Please specify the ways in which access of citizens and other interested entities to information held by public authorities (including information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public) is guaranteed in Kosovo, as well as the legislative framework applicable. Please include details of: the institutions to which the relevant provisions apply (coverage); the types of information to which citizens have right of access (including situations in which information may be withheld); deadlines; the charging regime if one exists; and the procedures and institutional setup for appealing against decisions on information requests.

2.4.6 What is the general practice of public authorities (domestic, regional or local authorities' level) regarding public consultation when taking decisions? Which are the mechanisms used? Please provide details of such mechanisms in at least one area – for example consultation processes when laws are being drafted, urban planning procedures or other important decision-making processes.

Control of public administration

2.4.7 Do appeal systems exist to challenge administrative decisions (application to the same authority, appeal to the higher authority, appeal before a court), and if yes, how are they applicable to the various layers described?

2.4.8 If you have the institution of an ombudsman, what are his/her competences in relation to the prevention and detection of corruption and other official misconduct?

Recruitment and career

2.4.9 Are there specific procedures for the selection and recruitment of public officials to try and ensure that i) officials are selected on the basis of merit, and ii) they are screened from an integrity perspective, e.g. by screening of personal (criminal) records? Are such procedures standard or are they only used for public functions susceptible to corruption?

2.4.10 Please indicate the gross annual salary of a representative public official at the beginning of his/her career and how it evolves through his/her career. Please provide these figures in absolute numbers and also as a proportion of an average salary in Kosovo.
2.4.11 Please describe the training provided to public administration staff on ethics, expected conduct, prevention of corruption. Provide further details as regards: a) its content (subjects taught); b) its duration, the period during which it takes place (whether it is part of the initial and/or in-service training) and whether it is recurrent; c) whether the training is compulsory or optional.
2.4.12 Do provisions establishing a system of regular, periodical rotation of staff employed within public administrations considered vulnerable to corruption exist? If there is no such system, please explain the rationale for not having one.

Codes of conduct / ethics

2.4.13 Please describe the content of ethical principles or codes of ethics/conduct that apply to staff employed within the public administration?
2.4.14 What are the measures in place to ensure that the standards are (if appropriate) enforced where they are breached? Do your authorities collect information on breaches of codes, on penalties, on enforcement actions? If available, please provide statistics.
2.4.15 What are the measures in place to ensure that public officials internalise these standards, so that they are inculcated as a routine aspect of official conduct?

Conflicts of interest

2.4.16 Please describe a) which types of conflicts of interest of public officials are regulated; b) mechanisms in place to prevent conflicts of interest; and c) how to resolve them before they arise.

2.4.17 Please describe to what extent public officials are prohibited and/or restricted to certain action such as a) accept gifts; b) hold posts outside the public administration; c) enter into contract (directly or indirectly) into contracts with Kosovo authorities. Please provide rules, if any.
2.4.18 a) To what extent are public officials obliged to declare assets; income; loans; debts; gifts; or any other interest. b) Please describe to what extent information to be declared is also required for a public official's family or relatives.
2.4.19 a) Please describe the mechanism for controlling declarations of interest and to what extent the declarations or the procedure is public. b) Please describe enforcement mechanisms in place, its level of independence, working methods and sanctions available regarding violations.

Reporting on corruption and its follow-up

2.4.20 Are public officials subject to an obligation to disclose misconduct/suspected corruption/breaches of duties or code of ethics, which they would come across in the course of their duties? What procedures are in place to regulate such disclosures? Are these procedures defined in legal provisions or in internal rules?
2.4.21 Are any measures in place to protect public officials who make such disclosures ("whistle blowers")? If so, please describe in detail.
2.4.22 Are there special units, inspection bodies or persons responsible for investigating internal corruption cases in selected branches of public administration (for instance, within the law-enforcement bodies or other institutions)? If so, please specify their organisation and powers ² .
2.4.23 Please specify the jurisdiction of the bodies competent for disciplinary investigations on misconduct/corruption of public officials, to whom they are accountable, the factors

² The entities referred to in this question are those services or persons dealing with internal inspection and ensuring control over corruption cases that may occur within the law-enforcement or other authorities.

ensuring their independence in investigation.
2.4.24 Please describe the relationship between disciplinary and criminal procedures.
2.4.25 What special training is provided for officials involved in the prevention, control, investigation and enforcement of measures to combat corruption? What mechanisms are in place to evaluate the effectiveness of the training?

2.5 Members of Parliament

2.5.1 Please describe briefly the organisation of your parliamentary system and how members of Parliament are elected.
2.5.2 Please indicate the gross annual salaries of members of parliament. Please provide these figures in absolute numbers and also as a proportion of an average salary in Kosovo.
2.5.3 Please describe measures in place to ensure transparency of the legislative process – for example whether the voting record of MPs is public, access of the public to plenary and committee meetings, etc..
2.5.4 a) Please describe the content of ethical principles or codes of ethics/conduct that apply in respect of members of Parliament; b) What are the measures in place to ensure compliance with these standards?
2.5.5 Please describe a) which types of external interests or conflicts of interest of members of parliament are regulated; b) mechanisms in place to prevent conflicts of interest; and c) how to resolve them before they arise.
2.5.6 Please describe to what extent members of parliament are prohibited from and/or restricted in certain actions such as to a) accept gifts; b) hold posts outside parliament; c) enter into contracts (directly or indirectly) with Kosovo authorities. Please provide rules, if

any.
2.5.7 To what extent are members of parliament obliged to declare assets; income; loans; debts; gifts; or any other interest. b) Please describe to what extent information to be declared is also required for a member of parliament's family or relatives.
2.5.8 Please describe the mechanism for controlling declarations of interest and to what extent the declarations or the procedure is public. b) Please describe enforcement mechanisms in place, its level of independence, working methods and sanctions available regarding violations of conflicts of interest.

2.6 Financing of political parties and election campaigns

General

2.6.1 Please describe the legal framework with regard to the following elements: a) the legal definition of political parties; b) do political parties hold legal personality; c) the requirements for recognising and/or registration of a political party.
2.6.2 Please provide: a) the number of recognised and/or registered political parties in Kosovo, b) a list of political parties who participated in the most recent parliamentary election, c) information on which parties are represented in parliament and their number of seats.
2.6.3 Please describe the rules for participating in elections and if there are threshold rules to enter parliament (a minimum number of votes, per cent of the votes cast, etc).
2.6.4 Please indicate to what extent and in which context there are restrictions (exhaustive list if possible) and/or limits on the provision/acceptance by political parties or electoral subjects/candidates of the following sources of funding: party membership subscriptions; public funding (e.g. monetary, subsidies, tax exemption, free or discounted use of services); contributions from entities related to a party; contributions from/to elected representatives; cash and non-cash (in-kind) donations; income from property; loans; income from party business or activities; fundraising activities; private business; individuals; other sources,

please specify.
2.6.5 If direct or indirect public funding is provided, please explain who can receive the public funding; the conditions which must be met in order to receive public funding; basis and method for allocation; different forms of indirect funding ³ including limits on such funding.
2.6.6 If private funding is allowed, please describe to what extent, if at all, such funding may consist of contributions from anonymous contributors; contributions from corporate entities and publicly held companies; contributions from entities which provide or seek to provide goods or services to public administration; contributions from foreign persons/entities; contributions from non-profit organisations, such as employee or employers' organisations, religious institutions, political organisations etc.; other sources (e.g. legacies, trusts).
2.6.7 Please specify with regard to their expenditure, any quantitative or qualitative restrictions or limits in your system concerning a) political parties, b) candidates for election c) others?

Transparency

2.6.8 Please describe the rules and practices for keeping books, records, financial accounts and supportive documents of income and expenditure of a) political parties, b) entities related, directly or indirectly, to political parties or under the control of a political party, b) candidates for election c) others.
2.6.9 Please describe the extent to which political parties and electoral subjects/candidates are obliged to submit the documents listed under the previous question to an external body entrusted with supervision/oversight.
2.6.10 Please describe to what extent contributions/donations to political parties or election candidates must be made public and how regularly, and who is responsible for their publication?

³ "Indirect funding" could be for example various forms of domestic subsidies, such as free time on state television, use of premises etc.

Supervision

2.6.11 Internal control: Please describe to what extent the accounts of a) political parties and b) entities related, directly or indirectly, to political parties are subject to internal and/or independent audits.

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2.6.12 External supervision: Please describe the mechanism/s or authority/ies (if any) in place entrusted with monitoring adherence of political parties and election candidates to political financing laws and regulations in general and with checking the relevant accounting records and supporting documentation of these entities and persons.

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2.6.13 Please describe the legal and institutional framework with regard to this (these) mechanism(s) / authority(ies) referred to in the previous question in particular as regards independence and accountability; funding; capacity in terms of infrastructure and number of staff devoted to oversight of political finance; composition, appointments, staff qualifications and term of office; powers; type of body (electoral commission, parliamentary commission, anti-corruption body, audit institution or other).

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2.6.14 Please describe the procedures by which suspected infringements of political financing regulations may be notified, in particular who may make such notifications and to whom. Please explain what is the trigger for investigations of suspected infringements (complaints from citizens, ex officio), and which body/bodies is/are responsible for such investigations?

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Sanctions

2.6.15 What sanctions and measures (taking into account administrative, civil and criminal liability) are foreseen and for which violations, in cases where an entity or person is held liable for violation of political financing laws and regulations? Please specify.

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2.7 Public procurement

2.7.1 Has Kosovo taken the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption.
2.7.2 Do such systems address:
<p>(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;</p> <p>(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;</p> <p>(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;</p> <p>(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;</p> <p>(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements?</p>

3. *Criminal Law, Law enforcement and Criminal Procedure*

3.1 Offences and sanctions

3.1.1 Please list and describe in detail the various criminal offences under which corruption may be sanctioned in Kosovo (notably, active and passive bribery of domestic and foreign public officials, bribery of members of domestic and foreign public assemblies, active and passive bribery in the private sector, active and passive bribery of officials of international organisations, active and passive bribery of members of international parliamentary assemblies, bribery of judges and officials of international courts, active and passive bribery of domestic and foreign arbitrators and jurors and active and passive trading in influence). Please specify for each of the offences the nature and level of sanctions foreseen and the rules regarding limitation. Please also supply the text of the relevant legal provisions.
3.1.2 When corruption is committed in an organised manner (for example, in a systematic and long-term manner, notably as the result of a conspiracy or through a network), please explain if it is considered as a separate offence, an aggravating circumstance or through other offences?

3.1.3 Are the establishment, the management and participation in a criminal organisation established as criminal offences under your legislation? Are such actions punished by other means, for example through conspiracy? Please indicate the criteria used to determine the existence of a criminal organisation (for example: permanence of the organisation, number of persons involved, degree of hierarchy).
3.1.4 Do the following facts constitute criminal or administrative offences under your legal system: creating or using an invoice or any other accounting document or record containing false or incomplete information, or unlawfully omitting to make a record of a payment in order to commit, conceal or disguise the offences of corruption?
3.1.5 Has money laundering been established as a criminal offence different from the receiving of stolen goods? If so, please describe the elements of this offence and indicate notably if corruption is a predicate offence for money laundering purposes.
<p>3.1.6 a) Are the following concepts used in connection with active and passive bribery:</p> <p>(1) (domestic) public official;</p> <p>(2) (members of) a domestic public assembly;</p> <p>(3) foreign public official;</p> <p>(4) (members of) a foreign public assembly;</p> <p>(5) official of an international organisation;</p> <p>(6) (members of) an international parliamentary assembly;</p> <p>(7) holders of judicial office or officials of any international court (whose jurisdiction is accepted by the party);</p> <p>(8) domestic arbitrator / arbitrator exercising his/her functions under the national law on arbitration;</p> <p>(9) foreign arbitrator / arbitrator exercising his/her functions under the national law on arbitration of any other State;</p> <p>(10) domestic juror / person acting as a juror within its judicial system ;</p> <p>(11) foreign juror / any person acting as a juror within the judicial system of any other State?</p> <p>b) If so, how are these concepts defined⁴ in relation to these criminal offences? Please indicate if all the functions/categories of persons mentioned in Article 1 (a) and (b) of the Criminal Law Convention on Corruption (ETS No.173) are covered by your legal provision(s).</p>
3.1.7 Please explain if and how the following elements/concepts are implemented in your

⁴ If these concepts are not defined as such in the law but are otherwise covered or further clarified in (for example) explanatory reports to the law, please also provide a translation of the relevant sections in these texts.

<p>legislation in connection with active and passive bribery of domestic public officials:</p> <p>a) promising, offering or giving (<i>for active bribery</i>);</p> <p>b) request or receipt, acceptance of an offer or promise (<i>for passive bribery</i>);</p> <p>c) any advantage⁵;</p> <p>d) directly or indirectly;</p> <p>e) for himself or herself or for anyone else;</p> <p>f) to act or refrain from acting in the exercise of his or her functions.</p>
<p>3.1.8 Is the application of the provisions on active and passive bribery of domestic public officials in any way restricted by use of the following concepts? If so, please indicate if and how these concepts are defined:</p> <p>a) undue⁶ (advantage);</p> <p>b) committed intentionally.</p>
<p>3.1.9 Please indicate if the elements/concepts mentioned in questions 3.1.7 and 3.1.8 are implemented in a different way with regard to active and passive bribery of persons mentioned in question 3.1.6.</p>
<p>3.1.10 (a) Is active and passive bribery in the private sector a criminal offence under domestic law? If yes, please explain if and how the following concept is implemented in your legislation in connection with active and passive bribery in the private sector:</p> <ul style="list-style-type: none"> Persons who direct or work for, in any capacity, private sector entities. <p>(b) Please indicate if the elements/concepts mentioned in questions 3.1.7 and 3.1.8 are implemented in a different way with regard to active and passive bribery in the private sector. If so, please provide further details.</p> <p>(c) Is the application of the provisions on active and passive bribery in any way restricted by use of the following concepts? If so, please indicate if and how this concept is defined.</p> <p>i) In the course of business activity;</p> <p>ii) (To act or refrain from acting) in breach of [their⁷] duties.</p>
<p>3.1.11 (a) Is trading in influence an offence under domestic law? If yes, please explain if and how the following element/concept is implemented in your legislation in connection with active and passive trading in influence. (Please also refer to the relevant section in your legislation):</p> <ul style="list-style-type: none"> Asserts or confirms that s/he is able to exert an improper influence over the decision-making of [public officials]

⁵ Please explain whether both material and immaterial advantages are covered by the concept of ‘advantage’ in your legislation.

⁶ Please explain - for example - whether certain advantages are considered not to be ‘undue’ (for instance, gifts below a certain value) and would therefore not lead to criminal liability of the public official concerned.

⁷ By the persons who direct or work for, in any capacity, private sector entities.

<p>(b) Please indicate if the elements/concepts mentioned in questions 3.1.7 and 3.1.8 are implemented in a different way with regard to active and passive trading in influence. If so, please provide further details.</p> <p>(c) In order to apply the legal provisions on trading in influence is it relevant whether the influence:</p> <p>i) is exerted or not?</p> <p>ii) leads to the intended result or not?</p>
<p>3.1.12 If possible, please indicate the number of investigations, prosecutions and convictions for all of the abovementioned offences over the last three years.</p>
<p>3.1.13 Please specify the rules applicable to determine whether your judicial authorities have territorial jurisdiction over all of the aforementioned corruption offences (see question 3.1.1) when they are committed in whole or in part in your territory. Does your legislation criminalise corruption committed abroad by persons originating from your jurisdiction or even by foreigners? If so, please indicate the criteria used. Is the “dual criminality principle” applicable in corruption offences committed abroad? If yes, explain how.</p>
<p>3.1.14 Please provide the text of the relevant section(s) in your legislation on aiding and abetting the commission of all of the abovementioned offences (see question 3.1.1).</p>
<p>3.1.15 (a) Which special defences⁸ are available under your substantive criminal law with regard to the offences mentioned in the question 3.1.1? Please attach the relevant legislation and explain reasons for introducing such defences. (b) What would the result be (e.g. discontinuation of proceedings or mitigation of the sentence) if such a defence was successfully invoked?</p>

Corporate liability

<p>3.1.16 Is there civil, criminal or administrative liability in respect of legal persons for criminal offences, in particular corruption and money-laundering related offences?</p>

⁸ For example, is there a provision in your substantive criminal law that exempts an individual from criminal liability if s/he has consented to the solicitation for a bribe by an official but reports it to the relevant authorities, is there a provision that exempts the briber of a foreign public official from criminal liability if the advantage is lawful in the foreign public official's country, or if the bribe was given under threat?

3.1.17 Please indicate the conditions under which a legal person can be held liable in Kosovo for corruption offences, and specify whether these measures are applicable to the offences of (i) active bribery (ii) trading in influence and (iii) money laundering committed for the benefit or on behalf of the legal person. To what extent can legal persons be held responsible for offences of corruption and laundering of the proceeds from corruption committed abroad?
3.1.18 Please indicate whether the liability regime is also applicable when lack of supervision or control by a natural person, who has a leading position within the legal person, has facilitated the commission of the offences mentioned under the previous question.
3.1.19 Is it possible to assign liability to the legal person when no natural person has been convicted or identified?
3.1.20 Does the liability of legal persons exclude criminal proceedings against natural persons who are perpetrators, instigators of, or accessories to (i) active bribery, (ii) trading in influence and (iii) money laundering?
3.1.21 Please provide statistics or samples on the proceedings instituted against legal persons for corruption offences.
3.1.22 What sanctions or measures are foreseen in the case a legal person is held liable for a) bribery, b) trading in influence and c) money laundering?
3.1.23 Please describe if there are any records of companies found liable for acts of corruption?
3.1.24 Is it possible to disqualify persons found guilty of offences from acting in a leading position in legal persons?

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Statistics

3.1.25 Please provide statistics concerning the investigation/prosecution /adjudication of corruption offences during the last three years.

3.2 Investigation and criminal procedure

3.2.1 Please describe briefly, the organisation, the role and the powers of the various institutions involved in the detection, investigation and prosecution of corruption at a central and at decentralised level.

3.2.2 Are there special departments, services, units or persons within the police, the prosecution service, the judiciary or other Kosovo authorities (e.g. intelligence services) which have been assigned specific functions and/or powers in the prevention, control, investigation and enforcement of measures to combat corruption? If so, please indicate since when such departments, services units or persons are in place and describe their organisation and powers.

3.2.3 Is the Kosovo criminal justice system based on the principle of discretionary prosecution or the principle of mandatory prosecution or a mixed system? Please describe your system. What control mechanisms have been established to ensure that prosecution is not discontinued as a result of undue pressure or undue considerations? Are there other possibilities (<i>actio popularis</i> , actions brought by victims, by taxpayers) that can be used in corruption cases?

3.2.4 Please describe if there are any specific interdepartmental rules or procedures between the police and the prosecution services when dealing with corruption cases?

3.2.5 Do specialised services in the fight against corruption co-operate with those fighting organised crime? If yes, please indicate how.

3.2.6 What measures are in place to ensure that persons or bodies in charge of preventing, investigating, prosecuting, and adjudicating corruption offences enjoy the necessary

independence and autonomy to perform their functions; notably in order to avoid undue pressure from superiors or the political power? Are there safeguards for officials reporting such pressure to their superior, to the police, to the prosecutor, to other authorities or to the public?

3.2.7 Please explain the rules applicable to the confidentiality of investigations (notably, relations between the investigators and the defence lawyers or lawyers of parties claiming damages regarding access to the file, disclosure or transmission of elements from the file, need of a judicial authorisation, applicable sanctions; relations between the investigators and the public; restrictions imposed on the press – e.g. prohibition to publish certain procedural documents relating to a criminal case before it is read in public hearing)?

3.2.8 Please indicate which special investigative techniques⁹ can be used legally in cases of corruption. Please explain what they consist of as well as the legal conditions that may apply to their use (notably, if they may only be applied to suspects, if they may only be applied if approved by the court, the period during which they may be used, etc.).

3.2.9 Does banking secrecy constitute an obstacle for judicial or law enforcement authorities to gather evidence? Please describe applicable provisions.

3.2.10 Are there measures in place to protect vulnerable targets in the framework of cases of corruption (protection of victims, of collaborators of justice, of witnesses, judges, prosecutors and police)? Please describe how this protection is ensured. Is protection based on a specific legal text? How is the notion of intimidation defined? Are acts of intimidation punishable under a separate legal offence? Through which other offences can these acts be punished? Are protective measures taken before, during and following the proceedings? Which protective measures are used? Are individuals who are closely related or connected to the person directly concerned (victim, witness, collaborator of justice, etc) also protected?

3.2.11 Can statements made before the legal authorities during preliminary hearings be used as evidence in court if the presence of the witness in court is impossible? Can evidence given during preliminary hearings be recorded using audio-visual equipment? Is it possible for anonymous witnesses to give evidence? Please specify the conditions for accepting anonymity (for example: presence of a serious threat to the witness, in order to allow the

⁹ For example, bugging in private or public premises; telephone tapping; other interceptions of communications (mail, fax, e-mail); electronic surveillance; observation; under-cover operations ; controlled delivery ; "pseudo-purchases" or other "pseudo-offences"; anonymous informants; searches ; cross-border pursuits (including hot pursuits); agent provocateurs.

presentation of an essential testimony for the court case, condemnation based not solely on the evidence provided by this witness, verification by the judge of the reliability of the witness)?

3.2.12 What privileges or arrangements can be proposed to suspects or to sentenced persons who agree to co-operate with the police and the judiciary in corruption cases (e.g. plea bargaining, reduced sentences, special protection)?

3.3 Confiscation and other deprivation of instrumentalities and proceeds of crime

3.3.1 Please describe the legal framework in relation to confiscation or other deprivation mechanism (underlining whether confiscation of instrumentalities and proceeds of corruption is discretionary or mandatory); describe how it works in practice, indicating notably whether there are authorities responsible for their implementation.

3.3.2 If confiscation of criminal proceeds and instrumentalities is possible, is it only possible for primary or also for secondary proceeds (= transformed or converted into other property)? May expenditures for gaining the proceeds be deducted?

3.3.3 Is value confiscation possible? If yes, how is the economic value assessed?

3.3.4 Is it possible to confiscate proceeds of crime without obtaining a conviction of the perpetrator (*in rem* confiscation)? If not, is the introduction of such a system being envisaged?

3.3.5 Confiscation of property owned by a third party: Is it possible to confiscate property, acquired by a third party or close relatives (spouse, cohabitee etc.)?

3.3.6 Does the system in place provide for possibilities to reverse the burden of proof for the purpose of confiscating proceeds of corruption? Please specify.

3.3.7 Does the system in place provide for possibilities to use the confiscated property in satisfaction of the claim of damages from a person who has claim to damages on account of the offence?
3.3.8 Briefly describe the legal framework in relation to interim measures (e.g. measures for the freezing or seizure of proceeds of crime, including corruption offences). Please provide the relevant legal texts.
3.3.9 Are there specific regulations in place for the management of proceeds of crime which have been seized or frozen?
3.3.10 Is a specific investigation aimed at identifying, tracing and freezing proceeds of crime systematically initiated when certain serious crimes, notably corruption, are detected?

3.4 Immunities from investigation, prosecution or adjudication of corruption offences

3.4.1 (a) Under your constitution/law, do certain persons benefit from specific immunities allowing them to avoid being charged with offences relating to corruption? ¹⁰ (b) If so, please specify the categories of persons concerned and the scope of the immunity granted, both in terms of the kinds of offences/contraventions involved, and the period for which immunity lasts. (c) How and when are these immunities lifted and what criteria are used?
3.4.2 (a) Does the legislation provide the possibility for some persons, in corruption cases, to benefit from specific privileges allowing them to be prosecuted or tried in accordance with a procedure constituting an exception to general law? (b) If so, please specify the categories of persons concerned and the scope of the privileges granted (c) How and when are these privileges lifted and what criteria are used?

¹⁰ This question does not concern diplomatic immunity.

3.4.3 Please also specify for each category of persons concerned why it is justified to maintain such immunity and to what extent such immunity has been applied in practice in recent years.

4. *International cooperation*

4.1 Please provide a list of treaty based multilateral obligations concerning legal assistance in criminal matters (including corruption offences) that apply in Kosovo or is planned to be ratified in the future.

4.2 If no treaties are applicable or applied, does your national legislation provide for the possibility of giving effect to requests for mutual legal assistance in criminal matters? Does your legislation enable the making of legal assistance requests in criminal matters? Please explain the legislative and other provisions concerned and specify notably the conditions under which your jurisdiction would be able to give effect to mutual legal assistance requests.

4.3 Please indicate specific factors (material, legal, political or others) which prevent or hinder mutual legal assistance in corruption cases.

4.4 Please provide available statistics on mutual legal assistance in corruption matters, for the last five years.

4.5 Does your jurisdiction allow for extradition of nationals in corruption cases? If not, under which conditions do the competent authorities of your jurisdiction prosecute them?

4.6 Please indicate which international anti-corruption conventions and treaties that have been ratified or is planned to be ratified in the future.

General cooperation – technical assistance

4.7 Please describe international anti-corruption programmes and projects, including any provided technical assistance in Kosovo. Indicate leading organisations and countries that are involved in such work.
4.8 Please explain what are the future needs in Kosovo in terms of anti-corruption programmes, including technical cooperation.