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Project against Economic Crime in Kosovo* (PECK II)
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ASSESSMENT REPORT

on compliance with international standards
in the anti-corruption (AC) area

Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies (police and customs)

* 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.

Abbreviations

AC	Anti-corruption
AT	Assessment Team
BP	Border Police
CC	Criminal Code
EC	European Commission
ECHR	European Convention on Human Rights
ETS	European Treaty Series
EU	European Union
EULEX	European Union Rule of Law Mission - Kosovo
EUOK	European Union Office to Kosovo
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit / Ministry of Finance
GRECO	Group of States against Corruption / Council of Europe
ILECU	International Law Enforcement Coordination Unit; Ministry of Internal Affairs
KIPA	Kosovo Institute of Public Administration / Ministry of Public Administration
ISC	Independent Supervisory Council for Civil Service
KAA	Kosovo Anti-corruption Agency
KC	Kosovo Customs
KIPRED	Kosovo Institute for Policy Research and Development
KJC	Kosovo Judicial Council
KOI	Kosovo Ombudsperson Institution
KP	Kosovo Police
KPC	Kosovo Prosecutorial Council
KTA	Kosovo Tax Administration
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism / Council of Europe
MPA	Ministry of Public Administration
NAO	National Audit Office
NGO	Non-Government Organisation
OPM	Office of the Prime Minister
OSCE	Organisation for Security and Cooperation in Europe
PECK II	EU/CoE Joint Project against Economic Crime in Kosovo
PIK	Police Inspectorate of Kosovo
PPRC	Public Procurement Regulatory Commission
SC	Supreme Court
SPO	State Prosecutor's Office
SPRK	Special Prosecution of Kosovo
UNDP	United Nations Development Programme
UNMIK	United Nations Interim Administration Mission in Kosovo
WB	World Bank

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1. EXECUTIVE SUMMARY

1. This report evaluates the effectiveness of the framework in place in Kosovo to prevent corruption amongst persons with top executive functions (PTEFs, including ministers and senior government officials) and members of law enforcement agencies (more specifically the Kosovo Police with Border Police and the Kosovo Customs). In the last few years Kosovo intensified its endeavours in the fight against corruption, adopting or amending several anti-corruption laws and anti-corruption policy documents (Law on prevention of conflict of interest, draft Law on protection of whistleblowers, National Anti-Corruption Strategy) in order to bring them in line with international anti-corruption standards.

2. However, concerns remain with regard to existence of several laws regulating same topics and thus creating inconsistencies, which also hamper implementation of the laws in practice. On the other hand a lack of appropriate impact assessment of legislation prior to adopting or amending a new law results in insufficiently resourced bodies tasked with corruption prevention, especially the Kosovo Anti-corruption Agency (KAA) which has a central role in supervising implementation of corruption prevention rules by PTEFs and law enforcement officials, developing awareness of integrity issues in general, preventing and fighting corruption. Another additional obstacle creating a gap between legislation and practice is lack of appropriate measures to ensure effective supervision and enforcement of the laws, especially in areas of conflicts of interest, protection of whistleblowers and access to public information.

3. It is important that the government becomes more proactive in developing its members' awareness of their specific integrity challenges and in improving the management of conflicts of interest. Not only must clear standards be set in this respect, especially by elaboration of a code of conduct for PTEFs, but compliance with these must be assured through development of an efficient mechanism of supervision and sanction. Moreover, advisory and raising awareness channels for PTEFs must be build up.

4. Lobbying currently remains unregulated in Kosovo. However, it seems that lobbying plays an important part in the government process and thus needs to be regulated in line with European standards.

5. Post-employment restrictions have recently been put in place. However, their enforcement by the KAA is lacking, as well as any raising awareness activities related to them.

6. As to the law enforcement authorities, several regulations, codes of conduct and guidelines have been adopted in area of corruption prevention and strengthening integrity. However, more has to be done with regard to accessibility to regulatory and other relevant documents pertaining to the corruption prevention and integrity related matters of the Kosovo Police. Visibility of the KP efforts in this area will definitely have a positive effect on the public trust in this institution.

7. Furthermore, the Kosovo Police has been one of few institutions that invested efforts in conducting integrity risk analysis which resulted in adoption of an action plan approved by the Director General of the Kosovo Police. Although the adoption of the action plan is an important step forward with the aim to serve as a guide for Kosovo Police employees on integrity-related matters as well as to strengthen institutional capacities, it fails to take into consideration previously identified deficiencies. Also, additional efforts have to be put into developing concrete operational mechanisms for its efficient and effective implementation.

8. As already mentioned, several codes of conduct are in place to provide guidance to the Kosovo Police and Police Inspectorate of Kosovo employees. However, available statistics with regard to violations of the codes applicable to the Kosovo Police employees causes doubt as to whether sufficient attention of the Kosovo Police management is given to supervision of their implementation and sanctioning in case of violation.

9. Bearing in mind vulnerability of those who find themselves in police procedures as well as sensitivity one must attribute to giving and receiving gifts due to potential affect a gift could have on lawfulness (or perception of it) of police action, current regulation on gifts which does not differentiate between a recipient being a police officer on one hand or any other civil servant on the other should be amended as to provide for a stricter gifts regime in respect of the Kosovo Police.

10. Regarding Kosovo Police employees awareness, the report underlines the need for additional efforts to be made in respect of development of training programmes and other raising awareness measures in respect of conflict of interest, gifts, post-employment restrictions and whistleblower protection.

11. Lack of appropriate whistleblower protection regime also calls for additional steps to be taken by the Kosovo Police, including the Border Police, by adopting adequate whistleblower protection measures and ensuring their implementation as well as strengthening awareness on existence thereof.

12. An important weakness in supervision of functioning of state apparatus has been identified with regard to powers and competence of the Ombudsperson Institution. Lack of response from state authorities with regard to recommendations issued by the Ombudsperson Institution in concrete cases as well as occasional restraint on the side of the Ombudsperson Institution to complain about obstruction from state authorities to respond or to comply with its recommendations hampers successful resolution of deficiencies detected by the Ombudsperson Institution. A recommendation has been issued to remedy that as well as to sufficiently equip the Ombudsperson Institution with resources it needs to carry out its tasks effectively.

2. INTRODUCTION AND METHODOLOGY

13. Kosovo has been evaluated for the first time in the framework of the European Union / Council of Europe Joint Project against Economic Crime (PECK) in June 2013. This assessment was carried out by following Group of States against Corruption (GRECO) methodology and its first, second third and fourth evaluation rounds. A follow-up of this assessment was conducted between June 2013 and November 2014. The resulting assessment and follow-up reports are available on the Council of Europe website (www.coe.int/).

14. This assessment report is conducted in the framework of the European Union / Council of Europe Joint Project against Economic Crime (PECK II). It is based on the GRECO fifth evaluation round that was launched on 1 January 2017 in respect of its member states. The objective of this report is to evaluate the effectiveness of the measures adopted by the authorities of Kosovo to prevent corruption and promote integrity in central governments (top executive functions) and law enforcement agencies (police and customs).

15. The Assessment Team (hereafter: AT) who prepared this report was composed of the following Council of Europe short-term international experts: Ms Vita Habjan Barboric (Slovenia), Ms Lenka Mlynarik Habrnalova (Czech Republic), Mr James Hamilton (Ireland) and Mr Johannes Verburg (The Netherlands). The Assessment Team was supported by Mr Edmond Dunga and Ms Vlora Marmullakaj from the Council of Europe Secretariat (PECK II Project).

16. The AT carried out an on-site visit to Kosovo from 22 to 26 May 2018 and interviewed representatives of the following institutions: the Office of the President, the Office of the Prime Minister, the Ministry of Justice, the Ministry of Public Administration, the Ministry of Finance, the Ministry of Internal Affairs, the Kosovo Anti-corruption Agency, the State Prosecutor's Office, the Special Prosecution, the Kosovo Prosecutorial Council, the Kosovo Judicial Council, the Supreme Court, the Ombudsperson Institution, the National Audit Office, the Kosovo Police, the Border Police, the Police Inspectorate of Kosovo, the Kosovo Customs, and the Kosovo Academy for Public Safety. The AT also interviewed representatives of the international community (the EU Office in Kosovo, UNDP and USAID), civil society and academia.

17. A written questionnaire based on GRECO fifth evaluation round was prepared, adopted and disseminated to Kosovo relevant authorities through the coordination of Kosovo Anti-corruption Agency during the period from 16 January to 20 February 2018. The present report was prepared on the basis of replies to the questionnaire by Kosovo authorities and the information provided during and after the on-site visit.

18. The AT reviewed the legal framework (relevant laws, regulations, guidelines and other requirements), policy framework, institutional framework and systems in place to prevent and combat corruption as well as examined the capacity, implementation and effectiveness of systems and mechanisms in place.

19. The report contains a description of the situation, followed by a critical analysis, reflecting on the efforts made by the actors concerned and the results achieved. It identifies possible shortcomings and makes recommendations for improvement.

3. CONTEXT

20. As Kosovo is not a member of GRECO, it has benefited from a first assessment of the anti-corruption measures that included relevant standards being covered under GRECO four evaluation rounds through the European Union/Council of Europe Joint Project against Economic Crime (PECK).¹

21. Corruption is widely perceived as being a major challenge in the context of Kosovo. In its Corruption Perceptions Index 2017 Transparency International has ranked Kosovo 85 out of 180 jurisdictions with a score of 39 (with 100 representing the lowest level of corruption)² whereas according to the 2017 Balkan Public Barometer, unlike the rest of Western Balkans, 57% of Kosovo's respondents believe that corruption is the most important problem after unemployment.³ The EU 2018 Kosovo Report⁴ emphasises that "corruption is widespread and remains an issue of concern. Concerted efforts are needed to tackle this problem in a comprehensive and strategic manner". By reference to local surveys, prevalence of large-scale corruption is perceived at 38.6% in courts, 34.7% in central administration/government, 25.7% in Kosovo Police and 38.6% in customs.⁵

22. The fight against corruption has been a top priority of governments for years at least when it comes to legal framework. However, effective implementation of the legislation remains a matter of concern, with a significant gap existing between legislation and practice. Also, the progress in tackling high profile officials is quite insufficient and instead replaced by a focus on petty corruption cases.

23. Moreover, the fight against corruption remains a key requirement for closer relations with the EU, and specially to obtain a visa free regime. Kosovo authorities recently undertook several ongoing legal initiatives including drafting and submitting a new Criminal Code, reviewing legislation on protection of whistleblowers, extended powers on confiscation of assets, political party financing, access to official documents, personal data protection, anti-corruption agency and declaration of assets from senior officials. Also, other legal initiatives are under process regarding prosecutorial and judicial councils, courts, disciplinary liability of judges and prosecutors, freedom of association in NGOs. In addition, a new law on prevention of conflict of interest was recently adopted and enforced. Regarding policy measures, a draft of anti-corruption strategy for the period 2018-2022 is under adoption process at the Assembly.

¹ The reference standards and covered themes included the following:

- Fundamental safeguards and corruption prevention in respect of the judiciary (judges and prosecutors), police, public administration, members of Parliament, financing of political parties and election campaigns and public procurement;
- Criminal law, law enforcement and criminal procedure: offences and sanctions, investigation and criminal procedure, confiscation and other deprivation of instrumentalities and proceeds of crime, immunities from investigation, prosecution or adjudication of corruption offences; and
- International cooperation.

² www.transparency.org/

³ Available at www.rcc.int/, p. 40. Kosovo seems to be the sole exception in South Eastern Europe where corruption is perceived as the second most commonly noted concern whereas in the rest of the region the economic situation is ranked second after unemployment.

⁴ Available at <https://ec.europa.eu/>, p. 4 and 18.

⁵ UNDP Kosovo, Public pulse XIV, available at www.ks.undp.org/

4. CORRUPTION PREVENTION IN CENTRAL GOVERNMENTS (TOP EXECUTIVE FUNCTIONS)

System of government and top executive functions

System of government

The President

24. Kosovo has a democratic system based on the principle of the division of powers and the check of balances between them. It has a multi-party political system. The President is elected by a two-thirds majority of all members of the Assembly by secret ballot for a term of five years, renewable once. The President represents the unity of the people. S/he is the legitimate representative of the country internally and abroad and guarantees the democratic functioning of the institutions of Kosovo, in compliance with the Constitution.

25. According to the Constitution and other acts, as a general rule, the President calls general elections to the Assembly (single chamber of Parliament) and convenes its first session. S/he dissolves the Assembly and calls new elections if no candidate for Prime Minister is elected for the second time. The President promulgates laws⁶ and issues decrees in accordance with Constitution. S/he may return adopted laws to the Assembly for re-consideration when s/he considers them to be harmful to the legitimate interests of Kosovo or of one or more communities. S/he may use the right to return a law only once by stating the reasons of return. Such a law shall be considered promulgated without her/his signature and shall be published in the Official Gazette. The same applies if the President does not take any decision on promulgating the law within eight days after receiving the law.

26. The President appoints a candidate for Prime Minister upon a proposal of political party or coalition holding the majority in the Assembly and appoints and dismisses other officials holding certain top functions as provided for by law, such as President of the Supreme Court, Chief Prosecutor, Commander of Security Force and Constitutional Court judges. S/he also appoints and dismisses judges and prosecutors upon the proposal of the respective council as well as heads of diplomatic missions upon the proposal of the government. In these matters, the President acts upon the proposal or recommendation of the government or the respective proposing authority after conducting internal selection procedures in which applications are assessed by the President's Office and an opinion of candidates is provided by the legal office. Transparency of such selection process is guaranteed by registering assessment of the proposals. The President also appoints the Chair of the Central Election Commission as well as the Governor of the Central Bank and other members of the Bank's Board.

27. Regarding legislative matters, the President has the right of legislative initiative for matters that fall within his/her scope of authority and also to return adopted law for review only once. S/he may propose amendments to the Constitution as well as may refer constitutional questions to the Constitutional Court. The President grants medals, titles of gratitude and awards and can grant a pardon based on an opinion received by an *ad hoc* committee appointed by the President which looks into a request for pardon and makes a proposal based on criteria defined in regulation.

28. The President is the supreme commander of the security forces. S/he decides on matters of state of emergency, with the consent of the Assembly and in consultation with the Prime Minister. Security forces are led by the President only in extraordinary situation while in state of peace they are led by the Minister in charge of security forces. The commander of security forces is appointed in a selection process done jointly by the President and the Prime Minister.

29. The foreign policy of Kosovo is determined and led by the President and is implemented by the responsible minister/Government in close consultation with the President. S/he receives credentials of heads of diplomatic missions accredited to Kosovo and signs/ratifies international treaties other than those requiring a qualified majority in the Assembly.

⁶ Within 8 days from the receipt of the law.

30. According to the Constitution, the President cannot exercise any other public function or any function in a political party. The President may be dismissed by the Assembly if s/he has been convicted of a serious crime or if s/he is unable to exercise the responsibilities of office due to serious illness or if the Constitutional Court has determined that s/he has committed a serious violation of the Constitution.

31. As agreed by GRECO, a Head of State would be covered in the Fifth Evaluation Round under "central governments (top executive functions)" when s/he actively participates on a regular basis in the development and/or the execution of governmental functions, or advises the government on such functions. These may include determining and implementing policies, enforcing laws, proposing and/or implementing legislation, adopting and implementing by-laws/normative decrees, taking decisions on government expenditure, taking decisions on the appointment of individuals to top executive functions.

32. It is noted that the functions of the Head of State in Kosovo are to a large extent of a formal, representative and ceremonial nature and s/he does not actively participate in governmental functions on a regular basis. The President does take certain decisions on appointments; however, such decisions follow a pre-selection process in which s/he is not involved and the role to propose a candidate for Prime Minister follows the results of elections and has to be endorsed by the Assembly. It follows that the functions of the President of Kosovo do not fall within the category of "persons entrusted with top executive functions" (PTEFs) as spelt out in the previous paragraph.

The Government

33. The Government is proposed by the Prime Minister and is elected by the Assembly, whereas the candidate for Prime Minister is appointed by the President after elections in consultation with the political party or coalition that has won the majority in the Assembly necessary to establish the Government. The Government of Kosovo consists of the Prime Minister, deputy Prime Minister(s) and ministers. The composition and work of the government are regulated by the Constitution and sublegal acts related to the work of the government. The Constitution guarantees that members of the Kosovo Serb Community and Kosovo non-majority Community are represented in the Government, each taking up one position of a minister; if the Government is composed of more than twelve ministries, there shall be a third minister representing a Kosovo non-majority community.

34. The candidate for the Prime Minister is appointed by the President and elected by the Assembly, who forms the proposal in consultation with the political party or coalition holding a majority in the Assembly. The Government members are elected by the majority of votes of all members of the Assembly, upon proposal of the Prime Minister. The number of members of Government is determined by the appointed Prime Minister and voted at the Assembly. The current composition of the government includes 5 deputy prime ministers and 21 ministers in total, out of which 20 are male and one is female.

35. The Prime Minister represents the Government and leads its work as well as coordinates and supervises the work of Government's members (Article 94 of the Constitution). S/he does not have the personal power to adopt government regulations, as these are adopted by the government as a whole. The Prime Minister may require from Government's members to report to him/her on their work and the work of their ministries as well as other information relevant for Government's functioning. S/he may propose the appointment or replacement of ministers and provide them with binding instructions to ensure implementation of the governmental policies. S/he may ask a minister to abrogate a ministerial regulation if in contradiction with another legal act or such ministerial regulation is abrogated by the Prime Minister her/himself.

36. The work of the government is regulated by a sublegal act⁷ according to which the responsibility for government actions is shared jointly by all its members, while the Prime Minister, deputy prime minister(s) and ministers are individually accountable for decisions made in their fields of responsibility (Article 97.2 of the Constitution). The Government decides by the majority vote of members present in the meeting. The Government makes decisions in accordance with the Constitution and the laws, proposes draft laws, proposes amendments to existing laws or other acts and may give its opinion on draft laws that are not proposed by it. The Prime Minister and every minister have the right to propose drafts of primary and secondary legislation. Ministers have the right to adopt secondary legislation that is under the

⁷ Regulation on Rules and Procedures of the Government No. 09/2011.

scope of responsibilities of the relevant ministry. Regulations and measures may be issued by the government collectively or by individual ministers. All implementing regulations, both from the government and ministries, must have a material basis in law and be issued either pursuant to special powers provided for in law or in order to execute a given legal provision.

37. Accountability for government actions is shared jointly by all its members, while the competent members of the Government are accountable for the decisions taken in the scope of their responsibilities. The government supervises the work of ministries and instructs them to ensure the implementation of laws and policies.

38. Prime Minister's acts and Government regulations are subject to assessment by the Constitutional Court (Article 113.2 of the Constitution) and also by the ordinary courts through the institution of *exception illegalis*. Other government documents and decisions are also subject to assessment by the courts.

39. The government as a body is accountable politically (vote of no confidence, vote of confidence, deputies' questions, parliamentary interpellation, *ad hoc* commissions created on a particular issue). However, the Assembly may invoke only the responsibility of the Prime Minister. Individual ministers may be appointed and removed from office by the Prime Minister her/himself at any time and without the consent of the Assembly. The Assembly oversees the work of the Government in accordance with the Constitution and the law. Moreover, any Member of Parliament has the right to address questions to the members of the Government.

40. The Prime Minister's Office is composed of the Prime Minister, first deputy Prime Minister, deputy Prime Ministers (the law does not limit the number of deputy Prime Ministers), Prime Minister's Cabinet with nine offices and units led by political advisors of the Prime Minister's Cabinet, central state administration bodies accountable to the Prime Minister's Office, Office of the Secretary General led by the Secretary General who is the highest civil servant in the Government and offices within the Office of the Prime Minister which are led by Office Directors who are civil servants.⁸

41. The Prime Minister's Cabinet is composed of the Prime Minister, first deputy Prime Minister, deputy Prime Ministers, Prime Minister's political advisors, deputy Prime Ministers political advisors and officers (so-called "support staff" – see further below) employed at the Cabinet. The First Deputy Prime Minister coordinates work with the deputy Prime Ministers and reports to the Prime Minister. Deputy prime ministers assist the Prime Minister in the performance of his/her functions within the powers granted by the Prime Minister. They may be given a mandate for a ministry. The Prime Minister may entrust them with his/her powers. In absence of the Prime Minister, the deputy Prime Minister(s) deputises for him/her.

42. Ministers are replaced by one of the deputy prime ministers or by other minister, as per a decision of the Prime Minister.⁹

43. Deputy ministers are appointed by the Prime Minister to assist the ministers in the areas determined by the minister. Together with political advisors and the minister they form the cabinet of the ministry. The deputy minister assists the minister in the performance of their functions within the powers granted by the minister.

44. The number of deputy ministers within the current Government is the highest ever (initially 69 and currently around 75). In previous governments, there have been around 40 and 50 deputy ministers. A minister may authorise in writing a deputy minister to deputise for him/her, but the deputy minister may not be empowered to issue regulations and vote in government sessions. Such delegation of authority does not absolve the minister of responsibility.

45. In accordance with Article 98 of the Constitution, members of the Government enjoy immunity from prosecution, civil lawsuit and dismissal for actions or decisions that are within

⁸ See Article 3 of the Regulation No. 16/2013 on the Organisational Structure of the PM's Office: the Office of the PM shall comprise of the PM, deputy PMs, PM's Cabinet, including 9 offices or units acting under the PM's Cabinet, 6 central administration bodies accountable to the Office of the PM, Office of the General Secretary.

⁹ Article 21 of the Regulation No. 02/2011 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries.

the scope of their responsibilities. The Constitutional Court¹⁰ has interpreted the scope of immunity of Government members by limiting it to the functional immunity for actions and decisions taken within the scope of their responsibilities. It has stated that members of the Government do not have any protection for actions taken and decisions made outside the scope of their responsibilities. In such cases, they have no immunity and they are liable for prosecution, civil lawsuits and arrest or detention in the same way as other citizens. There is no impeachment mechanism for the Government members in the Constitution. Moreover, a range of bodies, such as the National Audit Office, the Kosovo Ombudsperson Institution (hereafter: KOI), the State Agency for Protection of Personal Data and the Kosovo Anti-corruption Agency (hereafter: KAA), oversee the work of the government and ministries, and the role of public scrutiny is also significant.

46. Officers in Cabinets (of the Prime Minister, of the deputy prime ministers, of the ministers, of the deputy ministers) are officials that provide technical administrative assistance, so-called "support staff". They include a senior administrative officer, an administrative assistant, a driver and a security guard. The number and type of posts in ministers' cabinets are fixed by government regulations and internal acts of the respective ministry. The number of fixed-term positions in individual cabinets is determined by a government's decision¹¹. The exception is the Office of the Prime Minister, where the number of such posts is not limited. In general, cabinet staff comes from outside the civil service and are hired on positions of trust. They are not considered as civil servants and their mandate is tied to the mandate of the superior. They are hired on fixed-term contracts without a public call for applications. There is no vetting process foreseen in law. They do not perform any executive functions.

Political advisors

47. Political advisors to the Prime Minister are appointed by the latter. Among political advisors, one is appointed as the Prime Minister's Chief of Staff and s/he acts also as her/his Senior Advisor. Another shall be appointed as her/his Chief of Cabinet, while the third may be appointed as Government Spokesperson.¹² The Prime Minister may appoint up to 12 political advisors.

48. Political advisors to deputy prime ministers are appointed by the latter. Each deputy prime minister may appoint up to 6 political advisors. One of the political advisors takes up the position of the Chief of Cabinet and another of the High Political Advisor.¹³

49. Political advisors to ministers are appointed by the latter and each minister may appoint up to 6 political advisors.¹⁴ One of them may be appointed as spokesperson.¹⁵ Within each ministry there is a Secretary Office, headed by the Secretary General who is the highest administrative rank in the civil service. Employees in the Secretary Office are all civil servants.

50. Appointment of political advisors is tied to the personal trust based on contract and mandate of the office-holder who appointed them (the Prime Minister, deputy prime minister or minister). They are not obliged to be impartial and are required to demonstrate personal loyalty and political commitment to the superior. As per the law, they do not exercise power authority or other administrative powers in the highest bodies of state administration. Nevertheless, they provide a link between their superior's party and the political roles, inform the party of the

¹⁰ Decision of the Constitutional Court No. KO-98/11.

¹¹ Regulation No. 02/2011 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries.

See also different government regulations on internal organisation and systematisation of jobs in specific central institutions, available at <https://gzk.rks-qov.net>

¹² See paragraphs 1 and 3 of Article 30 of the Regulation No. 02/2011 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries.

¹³ See paragraphs 2 and 3 of Article 30 of the Regulation No. 02/2011 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries.

¹⁴ Article 21 of the Regulation No. 02/2011 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries.

¹⁵ See paragraph 4 of Article 30 of the Regulation No. 02/2011 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries.

superior about his/her activities, update him/her on the latest political developments etc.¹⁶ Political advisors are not subject to disciplinary procedures.

51. The law allows also for appointment of external political advisors as a special category of governmental officials. They are appointed by the Prime Minister, deputy prime minister or ministers and their mandate is tied to the one of the superior unless terminated earlier. They are accountable to the superior for their actions and are required to demonstrate personal loyalty and political dedication to their superior. The Prime Minister may appoint up to 10 external political advisors while a deputy prime minister and a minister up to 3.

52. Within its powers the Auditor General, the KOI and the KAA oversee the work of the government and ministries

Status and remuneration of persons with top executive functions

53. The Government consists of the Prime Minister, deputy prime minister(s) and ministers.

54. A candidate for Prime Minister is proposed by the President, upon consultation with the political party or a coalition holding a majority in the Assembly. The nominated candidate for the Prime Minister presents to the Assembly the composition of the Government which may be elected by the majority of votes of all members of the Assembly. After being elected, members of the Government take an oath before the Assembly and shall sign its text. The text of the oath reads as follows: "We, the members of the Government of the Republic of Kosovo, elected by the Assembly of the Republic of Kosovo, solemnly swear that with responsibility, devotion and honesty we shall carry out all our duties and work in accordance with the mandate given by this Assembly, by always applying the Constitution of the Republic of Kosovo, the law and the decisions adopted and by respecting international principles, norms and standards for freedom, equality and democracy in the interest of economic, educational, cultural and overall progress of all citizens of the Republic of Kosovo. We swear."

55. The Prime Minister may resign or be removed from office by a vote of no-confidence in the Assembly. Deputy Prime Ministers and ministers may resign or be removed from office by a decision of the Prime Minister or by a vote of no-confidence in the Assembly. With the resignation of the Prime Minister the Government ceases.

56. Deputy ministers are appointed and removed from office by the Government on the proposal of the Prime Minister or a minister. Their term in office ceases on the same days as the Prime Minister's or the minister's

57. Political advisors are a special category of governmental officials who are appointed directly by the Prime Minister, deputy Prime Minister, or minister.¹⁷ Their mandate ceases on the same day as of that who appointed them or earlier if terminated. Their employment is based on a contract.¹⁸

58. External political advisors are not governmental officials. They are selected by entities other than the Kosovo authorities and are paid by them directly. However, they are appointed by a head of a public body where they work (the Prime Minister, deputy prime ministers, ministers).¹⁹

59. Secretaries General are the highest ranking civil servants in the Government, and they are heads of administration within the Office of the Prime Minister or ministries. Secretaries General are appointed by the Government.

60. Salaries of the officers in the cabinets (the so-called "support staff") are determined by governmental decision on the basis of Article 94 of the Constitution. No regulation on their salaries exists but they are usually within the same range as salaries of civil servants

¹⁶ Article 20 of the Regulation No. 02/2011 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries

¹⁷ See Article 20, Regulation No. 02/2011 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries.

¹⁸ Article 20 of the Regulation No. 02/2011 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries.

¹⁹ See amended Article 31, Regulation No. 02/2011 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries, available at <https://gzk.rks-gov.net/>

performing similar tasks, with some exceptions. They are entitled to some additional payment (in the amount of approximately 50 EUR), due to extended work time, additional burden relating to tasks performed (driver, security guard). According to the Kosovo authorities a draft law which regulate the salaries of all public officials whose salaries are paid from the Kosovo state budget has recently been adopted by the Government and is at Assembly's proceedings. The authorities of Kosovo should continue with the legislative process for adoption of these laws in order to regulate salaries of all employed in the public sector, whatever their status, in order to secure transparency of spending of the state budget.

61. Non-government members (political advisors and the support staff) are appointed by the Prime Minister, the deputy prime minister and the ministers. They are hired on fixed-term contracts without a public call for applications, without any recruitment procedures and no conditions are required for their positions. If civil servants are hired for these positions, their prior post as civil servant is suspended and after their contract ends they may return to the same or equivalent position.

62. The ministries' websites contain the name of the respective ministers, deputy ministers, as well as the name of heads of cabinets and cabinet members.²⁰

63. As per Administrative Instruction No. 02/2008 on Wages of the Political Appointees Staff the Prime Minister, deputy prime ministers, ministers, deputy ministers and political advisors are considered as political appointees of institutions of the Government. The regulation sets their wages and prohibits acquiring two or more wages paid from the state budget at the same time if holding two offices simultaneously. The same applies if the above mentioned persons are, while in office, members of boards in public enterprises. The obligation to declare simultaneous holding of offices/position lies with the political appointees and a criminal offence of misuse of public funds is prescribed.

Position	Average Monthly Gross Salary for 2016
Prime Minister	EUR 1,443
Deputy Prime Minister	EUR 1,356
Minister	EUR 1,271
Deputy Minister	EUR 1,183

64. By Government Decision No. 04/20 of 20/12/2017, the Government decided to increase salaries of Government members (including deputy ministers) and some other senior and other officials at the Office of Prime Minister and cabinets of ministries.²¹ With regard to developments that followed, see paragraph 183.

Position	Average Monthly Gross Salary as per Decision of the Government
Prime Minister	EUR 2,950
Deputy Prime Minister	EUR 2,500
Minister	EUR 2,000
Deputy Minister	EUR 1,150

65. Different sub-legal acts (Administrative Instruction No. 04/2008 on use of phones (fixed and mobile) in Kosovo Government, Administrative Instruction No. 01/2008 on Determining Representation Expenditures for the Institutions of the Kosovo Government, Administrative Instruction No. 03/2008 on Using of Kosovo Government Vehicles) regulate remuneration of costs pertaining to exercise of public functions, i.e. phone costs (mobile and fixed phones), representation expenditures (lunches, dinners, drinks during meetings, occasional gifts), official cars by setting limits to expenditure permitted, depending on the position of the official. Each public institution should have an internal control system for performing scrutiny of the expenditure.

²⁰ It appears that out of 21 ministries, there are 67 deputy ministers (the highest number so far reached compared to 40 or 50 deputy ministers in previous governments) and 106 cabinet advisors (without counting 13 ministries for which there is no information nor the Prime Minister and Deputy Prime Ministers) – information checked on 3 April 2018.

²¹ See <http://kryeministri-ks.net/>

In 2016, the average monthly gross salary was EUR 525 in the public sector and EUR 371 in the private sector.

66. Employment of political advisors is based on a contract. Their salary is set by a decision of the person who contracted with them and is similar to the salary paid to a civil servant performing similar tasks. They are also entitled to be reimbursed for travel costs, representation expenditures and telephone expenditures as set by different bylaws (Administrative Instruction on Official Journeys, Administrative Instruction on Representation Expenditures and Administrative Instruction on Telephone Expenditures).

67. As mentioned before, external political advisors are a special category of government officials, who are appointed by the Prime Minister, deputy prime ministers or ministers. Their mandate is tied to that of the superior. They are recruited by consensus between the donor organisation and the office holder who recruits them. As a rule, they are not paid from the state budget and are not entitled to any benefits except for specific circumstances.^{22,23} However, their salaries are established by special agreements with donors (mainly international organisations) and are therefore not subject to monitoring of spending and no transparency is required regarding expenditures incurred by the external political advisors. Nevertheless, the public institutions at which they are based will provide them with office space and office equipment.

68. There seem to be quite some unclarity with regard to external political advisors: how are they recruited, do any criteria for recruitment exist, rules pertaining to them, especially confidentiality rule which would prevent them from sharing information gained in the course of their work with the donors who pay their salaries, accountability rules pertaining to them. There is also a lack of transparency with regard to a number of external political advisors working at each public institution, their work obligations and which donors pay their salaries. Therefore, **the AT recommends (i) that, for the sake of transparency, the names of "political advisors" and of "external political advisors" as well as any unpaid advisors in central government are published online and, in respect of the two latter categories, that information on their main job and ancillary activities, including "work-performance" contracts executed for central government, and the names of those providing for their salaries is easily accessible online; and (ii) to establish objective criteria and transparent procedures for the appointment and functions of political advisors and support staff.**

69. Basic salaries of civil servants are determined by the ranking of work posts into four functional categories and are classified in one of fourteen salary grades as provided for in the general laws regulating salaries of civil servants.

70. Law No. 03/L-001 regulates benefits granted to former high officials, among them being a former Prime Minister. After the end of the term in office s/he is entitled to an amount of 70% of the actual salary of the respective function if in office for at least six months. If the former Prime Minister was found guilty by a final verdict and sentenced with imprisonment of more than six months, s/he is not entitled to the benefit. The same applies in cases when the former Prime Minister holds another office for which s/he receives an equal or higher pay from the state budget. The former Prime Minister is also entitled to a senior assistant, a driver, a bodyguard for one year, a furnished and equipped office with communication costs covered to the amount of 1,200 EUR/month. S/he is buried in state ceremony.

71. Salaries for jobs and functions in the public sector are not published on governmental websites.

²² Regulation No. 02/2011 as amended by the Regulation No. 07/2018, Article 31.6 (coverage of travel expenses abroad on official mission).

²³ However, in one reported case a donor organisation required from a public body which recruited an external political advisor to cover 10% of its salary while the rest was paid by the donor organisation.

Anticorruption and integrity policy, regulatory and institutional framework

Anticorruption and integrity policy

72. On 23 March 2018, the Government adopted the National Anti-Corruption Strategy 2018-2022 (hereafter: the National AC Strategy) and its Action Plan (decision No. 02/37). Currently their adoption in the Assembly is pending. The related Action Plan contains specific measures, defines responsible ministries and institutions as well as sets deadlines for their implementation. It is organised around four areas of action, namely: 1) political sector; 2) public administration; 3) law enforcement and judiciary; 4) public procurement and public financial management. Overall, the Action Plan contains 19 objectives and 87 measures translated into 141 activities and organised in the four areas mentioned above. Other previous strategic objectives (i.e. 2013-2017) including horizontal or cross-cutting issues, private sector and business environment as well as civil society and media are not anymore included in the new Strategy.

73. The process of drafting has been coordinated and supervised by the KAA, which also has a leading role in the process of drafting itself. Civil society and the media have also been consulted in the process. With a new Law on the KAA which is currently being drafted the obligation for drafting of the national anti-corruption strategy will be given to the Government.

74. In order to ensure strategic positive results during the five-year period, the National AC Strategy expresses the need for the Government to demonstrate its political will by setting priorities, through the AC Strategy and its Action Plan, planning activities and ensuring that those activities are budgeted and implemented. A parliamentary supervision is proposed to be strengthened, by regular reporting of ministries, heads of agencies and other relevant public officers to the Assembly and responding to questions.

75. The National AC Strategy points out improvement and more effective implementation of policies and good governance as conditions for prevention and fight against corruption. General principles of the National AC Strategy include: development of a "zero tolerance" approach against corruption, increasing integrity, responsibility and transparency of the work of public administration bodies and strengthening the trust of citizens in public institutions, improvement of legislation and strengthening institutional capacities for prevention and the fight against corruption, as well as raising awareness and education of general public in the anti-corruption area.

76. Findings of various international reports, surveys and analysis²⁴ as well as national strategies have been taken into account in developing the National AC Strategy and its Action Plan which point to corruption as being among the greatest problems in Kosovo, with poor rule of law and regulatory quality. No appropriate impact assessment of legislation is made prior to amending or adopting a new law. Implementation of anti-corruption legislation and the general fight against corruption are especially considered to be insufficient by the population. The need for proactive engagement of the state in improving the efficiency of the police, prosecution office and judiciary in general, particularly in prevention and fight against corruption and organised crime are highlighted.

77. Problems that have been identified in strategy sectors range from absence of effective internal control mechanisms in the area of anti-corruption, absence of a relevant unit for sector risk analysis related to corruption risks, absence of integrity plans as a corruption risk management tool in all public institutions, and lack of a responsible monitoring institution, insufficient and incomplete access to public documents, absence of internal audit, and improper management of own-source revenues in public institutions, improper coordination of law enforcement institutions, absence of specialisation in corruption-related matters and of a revision mechanism in law enforcement institutions and absence of financial investigation in parallel with criminal investigation. These problems have been addressed in specific objectives, with measures and activities in the Action Plan.

78. Several deficiencies have been identified in the field of property and income declarations as well as in the field of conflict of interest (paper-based system of declarations, lack of sharing

²⁴ Worldwide Governance Indicators 2016, UNDP study "Public Pulse on corruption" of 2016, Global Corruption Barometer TI 2016, Kosovo National Integrity System Assessment from 2015, Technical Documents of Project against Economic Crime in Kosovo (PECK II) and European Commission – Kosovo Country Report.

data and findings among competent bodies, criminal sanctions are not implemented, sanctions for misdemeanours are not dissuasive).²⁵

79. Previous National Anti-Corruption Strategy and Action Plan 2013-2017 set out specific anti-corruption objectives (57 specific objectives within 34 strategic objectives), 176 concrete anti-corruption measures to be implemented by central and local level institutions, responsible institutions as well as the timeframe for achieving these objectives. This strategy contained horizontal (cross-cutting) as well as specific objectives, in each vertical priority sector, among them also Political Sector and Law Enforcement-Prosecution-Judiciary. Specific objectives in the Political Sector are for example "Building a control system to verify the origin of assets declared by senior public officials" and "Parliamentary control over governmental anti-corruption policies" and "Promoting objective criteria for the appointment of persons in executive positions under government competence"²⁶. An integrity plan as a corruption risk assessment tool was identified as needed and a system for monitoring of implementation of ethical codes should be established within the institutions.²⁷ Gaps were identified using risk assessment methodology in different sectors (i.e. public procurement sector, health sector). It was to help institutions to develop their anti-corruption culture and attitude towards more result-oriented approach.

80. This Strategy was highly contested by members of the opposition parties and some civil society organisations, due to its content but also because of lack of their involvement in the process of drafting.²⁸ Another report also refers to a lack of adequate financing and a lack of "measurable" indicators that negatively affects the achievement of the intended anti-corruption results.²⁹

81. At the policy level, implementation of the National Anti-Corruption Strategy 2013-2017 and Action Plan continued to generate ineffective trends that are due to insufficient involvement of concerned stakeholders and weak political support.³⁰ In 2016, 55.47% of measures are reported as implemented, 15.32% as partly implemented or not implemented and 29.19% as unreported.

82. Main Political Sector objectives that have been determined are the following: 1. Strengthening anti-corruption mechanisms in the country, 2. Alignment of legislation in the field of the fight against corruption with international standards; 3. Increasing transparency in activities of public institutions and improving the citizens access to information.

83. Measures that have been determined to achieve the objectives of the Political Sector are, among others: 1. Strengthening internal control mechanisms; 2. Reviewing the KAA's competences and mandate, necessary legal amendments that give KAA the right and responsibility to issue opinions in relation to the anti-corruption assessment of laws and by-laws, assessment of corruption risks and monitoring integrity plans; 3. Approving necessary bylaws concerning the amending and supplementing the Law on KAA; 4. Approving the Law on Declaration of Property; 5. Improving the legal framework in the field of prevention of conflict of interest; 6. Corruption proofing of laws and bylaws; 7. Issuance of opinion in relation to the assessment of risks from corruption; 8. Drafting and monitoring integrity plans; 9. Harmonising the anti-corruption legislation with international standards; 10. Reviewing the legal framework for protection of whistleblowers.

84. The main objectives of the Law Enforcement and Judiciary sector are the following: 1. Increase coordination and cooperation between law enforcement institutions, in particular those specialised in the field of anti-corruption; 2. Improve the legal framework, promote corruption reporting and encourage citizens active participation in the fight against corruption; 3. Ensure effective protection of victims, witnesses and whistleblowers; 4. Increase the efficiency level of

²⁵ See paragraphs i.e. 214-217 and 220-221.

²⁶ See the report on Monitoring of Anti-Corruption Strategy, available at www.legalpoliticalstudies.org

²⁷ See p. 21 of the Anti-Corruption Strategy 2013-2017.

²⁸ Civil society organisations described it as being "weak in content that instead of fighting corruption, it legitimises it" – see p. 23 of the SELDI report, available at <http://seldi.net/>

²⁹ See p. 8 of the Assessment of the Implementation of the Anti-Corruption Strategy and Action Plan 2013-2017, available at www.legalpoliticalstudies.org

³⁰ See the monitoring reports on the implementation of the Anti-corruption Action Plan and KAA annual reports: [1st monitoring report](#), [2nd monitoring report](#), [3rd monitoring report](#), [KAA 2013 Annual Report](#), [KAA 2014 Annual Report](#), [KAA 2015 Annual Report](#), [KAA 2016 Monitoring Report and KAA 2016 Annual Report](#).

law enforcement institutions and judiciary to prevent, investigate and adjudicate corruption cases.

85. To achieve the objectives stated in the previous paragraph, the following measures have been determined: 1. Review of institutional mechanisms and bodies in the area of anti-corruption in terms of legal infrastructure, cooperation and improvement of inter-institutional communication; 2. Identification of corruption cases due to cooperation of law enforcement institutions and the establishment of JITs; 3. Facilitating communication between competent institutions to combat corruption; 4. Organisation of joint trainings between police officers, KAA investigators, prosecutors and judges dealing with corruption cases; 5. Prioritising corruption cases; 6. Increasing transparency in the activity of law enforcement institutions; 7. Post-employment restrictions should be set for law enforcement officials; 8. Human capacity building in respecting the Codes of Ethics etc.

86. The KAA through its Division of Investigation and Strategy remains responsible for monitoring and verifying implementation of the National AC Strategy through measures envisaged in its Action Plan. Annual (instead of bi-annual) reporting to the KAA is required by implementing and concerned institutions. The KAA has to submit to the Assembly an annual report of the implementation of the strategy. Moreover, the KAA has the possibility to revise the Action Plan every year (instead of every two years in the previous cycle) (Articles 5 and 17 of the Law on KAA). The new draft Law on KAA envisages strengthening the KAA's supervisory role as in the past reporting on implementation of actions was weak (almost 30% of actions were not reported on for the period of 2016 while for the period of 2015 the number was approximately 26%).

87. In 2015 the government adopted a Strategy on Modernisation of Public Administration 2015-2020³¹ which aims at ensuring implementation of principles of ethics and integrity, but only in the civil service. Among priority policies is therefore the "Implementation and strengthening of the system to ensure implementation of principles of ethics and integrity in the civil service. Strengthening of mechanisms to monitor implementation of the new Code of Ethics in the Civil Service". The corresponding Action Plan sets the specific objective "Strengthening the system to monitor implementation of principles of ethics and integrity in public administration" and envisages three activities: (1) establishing the monitoring system; (2) training and developing capacities for the persons responsible for monitoring the principles of ethics and transparency in the public administration; and (3) monitoring the implementation of the code of ethics in the civil service. The Ministry for Public Administration is mainly responsible for the implementation of these activities.

88. Current legislation does not oblige public institutions to carry out corruption risk assessments or use tools for this purpose (i.e. integrity plans) and there are no standardised risk assessment tools applied in the Kosovo public sector. Few institutions have adopted integrity plans as a result of National AC Strategy 2013-2017 that foresaw among measures drafting of integrity plans which some international organisations helped to implement providing international expertise. According to the Government's Annual Work Plan for 2017 the Ministry of Public Administration adopted its integrity plan. With financial support of international organisations corruption risks assessment projects have been carried out also in sectors such as health, education, energy and mining sectors as well as in five municipalities (Pristina, Gjakova, Graçanica, Mamusha, and Gjilan). Identification of the main corruption risks and vulnerabilities in the judiciary, prosecution service and public procurement also took place recently.

89. The preparation of integrity plans is voluntary. There is no mechanism for monitoring the adoption and implementation of the integrity plans. As the integrity plans have been drafted with the support of international partners and the participation of international experts which is a sound approach for the introduction of the tool, the civil servants might not feel sufficient ownership of these documents. Assessing of corruption risks related to the different functions, processes and positions has not been mainstreamed in the central state administrative bodies.

Legal framework, ethical principles and rules of conduct

90. Kosovo has a vast corpus of anti-corruption legislation, but its implementation is a concern as systematic planning of measures lacks measuring the impact which hinders further development of anti-corruption activities. There also seem to be several institutions mandated

³¹ See Kosovo Integrity System (p. 2) and the Strategy, available at www.kryeministri-ks.net/

with fighting and preventing corruption which do not cooperate sufficiently in practice and their competences are unspecified as well as overlapping.

91. The relevant legislation in place regulates *inter alia* the organisation and functioning of the KAA, declaration of assets of senior public officials and prevention of conflict of interest in the discharge of public functions.³² It concerns asset declarations and their supervision, prevention of conflicts of interest, restrictions on the performance of other activities and prohibitions relating to gifts.

92. The Law No. 06/L-011 on Prevention of Conflict of Interest in Discharge of Public Functions (Official Gazette 5/2018; hereafter: LPCI) was adopted by the Assembly on 30 March 2018 setting rules, restrictions and prohibitions which apply not only to senior officials but also to any other official person. It applies among others to the Prime Minister, his/her deputies, ministers, their deputies and political advisors, therefore all PTEFs and heads of cabinets as well as to all persons nominated by them. It also applies to secretaries general of ministries and of the Prime Minister's Office. Its application to law enforcement officers is discussed later in this report.

93. The Law No. 04/L-050 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials (Official Gazette 16/2011; hereafter: LDCP), amended with Law No. 04/L-228 on Amending and Supplementing the Law No. 04/L-050 on Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all Official Persons³³ (Official Gazette 28/2014) governs asset declarations and their supervision as well as prohibitions relating to gifts. It applies to the Prime Minister, his/her deputies, ministers, their deputies, political advisors and heads of cabinets as well as to all persons nominated by them. The law is currently being amended and it will broaden the competence of the KAA (i.e. increase of pre-investigative powers, new rules on acceptance and declaration of gifts; introducing electronic declaration system).

94. The Law No. 2004/34 on Suppression of Corruption (hereafter: LSC) foresees anti-corruption measures and governs official person's duties regarding conflict of interest, incompatibility of functions and activities, prohibitions relating to gifts, supervision of assets and limitations on business activities set for public authorities. It also obliges official persons to report cases of corruption which come to their knowledge. It applies to the Prime Minister, ministers, secretaries general of the government and of ministries.

95. The Law No. 03/L-159 on Anti-Corruption Agency (Official Gazette 65/2010, hereafter: LACA) defines status and competences of the central independent and specialised institution for fighting and preventing corruption in Kosovo, namely the KAA. For detailed information on its powers see paragraphs 98-102 of this report. The law is currently being amended and the KAA's competences are to be broadened (i.e. a new competence being monitoring integrity plans of institutions which shall become an obligatory risk management tool; corruption proofing).

96. The Law No. 03/L-149 on the Civil Service (Official Gazette 72/2010, hereafter: LCS) defines principles and terms of civil servants' professional conduct covering areas that are relevant for the prevention of corruption, i.e. the obligation to perform duties without self-interest, pursuant to the public interest and in compliance with the legal system, commitment to pursue legality and protection of public interest vis-à-vis private gain, the duty to refuse undue rewards, the duty to abstain from unduly rewarding other civil servants, a prohibition to obtain personal gain from the knowledge of service secrets, confidential information and information for internal administrative use, prohibition to abuse public property, prohibition to execute unlawful orders etc. The law is currently being amended.

97. The Law No. 03/L-189 on the State Administration (hereafter: LSA) in its Article 6 stipulates that the work of administration bodies is public. Ministries and the Office of the Prime

³² Law No. 2004/34 on Suppression of Corruption (Official Gazette 10/2007; Law No. 03/L-159 on Anti-corruption Agency (OG 65/2000); Law No. 04/L-050 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials (OG 16/2011) and Law No. 06/L-011 on Prevention of Conflict of Interest in Discharge of Public Functions (OG 5/2018).

³³ Available at www.kuvendikosoves.org/

Minister are the highest state administration bodies (Article 2, paragraph 1). The law is currently being amended³⁴.

98. The Law No. 04/L-043 on Protection of Informants regulates reporting of civil servants in good faith to the respective authority any reasonable doubt about any unlawful action. Those who report are deemed as whistleblowers and are under the provisions of the law protected from punitive or disciplinary measures, dismissal or suspension from work as well as any exposure to any form of discrimination. Recently, a new draft Law on Protection of Whistleblowers has been adopted by the Government (adopted on 12 June 2018). If adopted, the Law No. 04/L-043 on Protection of Informants will be repealed.

99. A new Law on Misdemeanours has been adopted in 2017 and currently the Ministry of Justice is trying to harmonise other laws which also prescribe misdemeanours (among them are also the LPCI and LDCP) with this law.

100. The anti-corruption legal framework has been updated many times.³⁵ Currently, several draft laws are in the pipeline to be adopted by the Parliament (draft Law on Protection of Whistleblowers) or are discussed at the government level (draft Law on KAA and draft LDCP). Furthermore, other laws relevant to the functioning of the Government and the civil service are being drafted (draft Law on the Government, draft Law on Organisation and Functioning of State Administration and Independent Agencies, draft Law on Public Officials and draft Law on Salaries in Public Sector). Several interlocutors criticised the fact that no sufficient prior assessment with regard to the financial or human resources needed for implementation of a particular law is made which results in the law not being implemented due to lack of financial or human resources. Although according to Article 26 of the Law No. 03/L-048 on Public Financial Management and Accountability³⁶ every new legal initiative must initially determine budgetary and economic impact, such assessment seems to be often only formal and not reflecting the reality. In practice, such an assessment is sometimes made after the law is already adopted and only then is it expected that new competences awarded to a public body are used as an argument for increase of the budget allocated to the public body. Also, it has been noticed that sometimes no violations and sanctions for violations are prescribed by the law and no dedicated body is responsible for monitoring and/or enforcement of the law which results in lack of its implementation. Furthermore, some topics previously introduced in Law No. 2004/34 on Suppression of Corruption have been regulated in a more detailed manner by laws adopted at a later stage but since the first have not been repealed they cause confusion among interlocutors as to their application. More attention should be given to consistency when the existing laws are being revised so as to prevent any overlapping in regulation. **The AT therefore recommends that (i) Kosovo authorities clarify the existing legal framework where problems of regulation of a certain topic by several different laws occur, causing inconsistencies; and (ii) more consideration should also be given to assessing resources needed for implementation of any draft law prior to its adoption so as to facilitate its implementation.**

Institutional framework

101. The KAA is an independent government body, established in 2006 (commenced its operation in 2007). Although it has a central role in devising and implementing anti-corruption policies in Kosovo, it does not have appropriate legal mechanisms to exercise corruption related activities.³⁷

102. The KAA has a mandate to prepare, monitor and supervise the adoption and implementation to the National AC Strategy with its Action Plan, to supervise and verify declared wealth of state officials, including PTEFs, to supervise and prevent conflict of interest cases, acceptance of gifts and restrictions on the performance of other activities contained in

³⁴ Draft Law No. 06/L-113 on Organisation and Functioning of State Administration and Independent Agencies is under Assembly proceedings and would replace the existing Law No. 03/L-189 (available at <http://ligjet.kuvendikosoves.org/>).

Moreover, a draft Law on the Government is planned to be proceeded this year according to the Government Legislative Programme available at <http://kryeministri-ks.net/>

³⁵ See report, p. 4, available at www.kipred.org/

³⁶ The Administrative Instruction No. 03/2015 regulates the budget impact assessment for new government initiatives.

³⁷ See p. 22 of the report available at <http://seldi.net/>

the legislation. Its task include also detection and preliminary administrative investigation of corruption³⁸, the provision of advice on the implementation of the laws and on anti-corruption issues, the assistance of public and private sector institutions in developing codes of ethics, the collection and publication of statistical and other data regarding the state of corruption in Kosovo and cooperation with other institutions in drafting, implementation and harmonisation of legislation for combating and preventing corruption. However, no specific mandate is given to the KAA to promote integrity and prevent corruption, including with respect to PTEFs in general (and not merely responding to a prior request for advice or guidance).

103. The KAA is headed by a director with a five-year mandate, renewable once. S/he is proposed for election by the Oversight Committee of the KAA which manages selection process to the Assembly and is elected by a simple majority of the deputies by secret ballot. S/he leads and organises the work of the KAA and supervises the work of the employees. The KAA staff comprises 40 professionals with different areas of expertise as well as supporting staff. Direct supervision over the KAA is exercised by the Assembly of Kosovo, through the Committee on Legislation, Mandates, Immunities, Rules of Procedure of the Assembly and the Oversight Committee of the KAA, currently composed of ten members of the Assembly. The KAA presents its annual reports to the Assembly. Its decisions and opinions are published on the internet.

104. In 2017, the KAA's approved budget for its activities was in the amount of EUR 505,664 while the revised budget was EUR 480,703.68. The majority of the budget was spent on salaries of the staff (EUR 358,295.68). In 2016, the KAA was allocated a budget of EUR 446,321.22, out of which EUR 354,708.84 was spent on salaries.

105. Only 26 members of staff carry out competences of the KAA as set out in different laws – others are administrative staff. For years the KAA has raised a problem of lacking sufficient staff to be able to carry out its competences (i.e. currently only 6 persons work in area of supervision of property declarations and gifts while 4,700 senior officials are required to declare their property – with amendments to the LDCP the number should increase to 10,000 senior officials). After adoption of the new law regulating conflict of interest, the KAA expected its budget to be increased and to be able to recruit new staff (currently only 3 persons work on conflict of interest matters). However, its request for such budgetary increase will be decided in the next budgetary year. Furthermore, new draft laws (on the KAA, on whistleblowers) are in the process of drafting that ought to stipulate new competences of the KAA (monitoring of whistleblower's regime, integrity plans becoming an obligatory tool while the KAA being a body responsible for monitoring their implementation etc.). In the AT's view it is instrumental to the efficiency of the KAA to have a sufficient number of qualified staff and resources for the implementation of its tasks in the key areas identified above. Consequently, in order to ensure that the KAA is adequately equipped to perform its tasks with respect to PTEFs and law enforcement agencies effectively, **the AT recommends that the Kosovo Anti-corruption Agency's needs for financial and personnel resources in the areas of prevention, conflicts of interest, asset declarations and lobbying be assessed by an independent authority and, based on the assessment, needed resources be increased as a matter of priority.**

106. As per Article 9 of the Regulation No. 02/2011 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries each minister should ensure, while performing their responsibilities, that their respective ministries create and implement measures against corruption. Appendix 2 of the same regulation stipulates that the Ministry of Finance is competent to support anti-corruption activities in public administration institutions (paragraph ix.), in conformity with the Law No. 03/L-048 on Public Financial Management and Accountability. In practice there seems to be a lack of awareness of this obligation and ministries do not invest any particular effort into measures against corruption.

107. The National Anti-Corruption Council has been established by the President's decree in 2012. It serves as a consultative coordination body for the main stakeholders involved in the fight against corruption. It is chaired by the President while other members of the Council are the heads of the following institutions: KAA, Auditor General, parliamentary committees on legislation, budget and finance and public finance oversight, Kosovo Judicial Council, Kosovo Prosecutorial Council, Supreme Court, Ministry of Justice, Ministry of Internal Affairs, Ministry of

³⁸ In general administrative investigation aiming to enforce the Law on Declaration of Assets and the Law on Conflict of Interest as well as corruption "preliminary investigation" based on complaints received (with potential criminal follow-up by law enforcement bodies).

European Integration, Ministry of Local Government Administration, Kosovo Police, Financial Intelligence Unit etc. The President may set up different *ad hoc* working groups for specific topics. The Council has a consultative role with some of its functions being to coordinate the activities for preventing and fighting corruption, to identify and coordinate the activities supporting the implementation of the national strategy in the fight against corruption, to define the priorities and policies for the implementation of the legislative agenda in increasing efficiency in the fight against corruption, to coordinate the activities of the responsible institutions in strengthening the existing mechanisms in fighting corruption, to increase the awareness of society to prevent and fight corruption. The body was much more active under the previous President who established it and prepared reports on its activities which is not the case now. There is not much awareness pertaining to the work of the Council among the interlocutors whom the AT met, as the Council is deemed to be addressing merely political matters. Considering the state of the functioning of the Council, at the last meeting, the President announced a functional review of the Council in order to render its work dynamic and further advance the guarantee for a constitutional functioning of institutions. On the other hand, the meetings are broadcast live and speeches of the President on work of the Council are made public.³⁹

108. The Special Prosecution Office within the State Prosecution has exclusive competence to investigate and prosecute certain serious offences including serious crimes of corruption (meaning corruption offences committed by senior officials and crimes with a high monetary value subject to fines up to EUR 500,000 in line with Article 46 of the Criminal Code). It has jurisdiction in the whole territory of Kosovo. It lacks a sufficient number of prosecutors (only 14 out of the full complement of 18, three of whom are due to retire soon while another three will assume their posts in November this year). This problem is especially critical now as the Special Prosecution Office has recently been given competence to deal with war crimes as well as economic crime (previously war crimes were dealt by the EULEX prosecutors).⁴⁰ While on-site, several interlocutors also mentioned the Special Prosecution Office's difficulties to recruit new prosecutors as they were reluctant to apply for posts although this is disputed by the authorities.

109. The Anti-Corruption Task Force has been established as part of the government's anti-corruption efforts. Many interlocutors did not seem to be acquainted with its activities or competences.

110. The Office on Good Governance within the Office of the Prime Minister has been established in 2003. Among its tasks is monitoring of the public consultation process pertaining to a draft law prior to its adoption by the Government. It also reports to the KAA on implementation of activities from the National AC Strategy and its Action Plan for which the Office of the Good Governance is responsible. It has eight employees who are all civil servants.

111. Within the judiciary and with the aim at building up a track record of investigations, final court rulings and confiscations of high-profile serious organised crime and corruption cases, in 2015 the Kosovo Judicial Council decided that target cases concerning corruption and organised crime shall be given an absolute priority in courts. Court presidents are required to undertake measure for immediate assignment of such cases and to report every month about received cases, actions undertaken and related status. A Committee established in 2015 by the Kosovo Judicial Council and composed of three judges was entrusted to monitor court activities with regard to the management of corruption cases⁴¹ to be fast-tracked.

³⁹ NAC meeting of 4 April 2018 available at www.botasot.info/

⁴⁰ Following 2014 amendments to the SPRK Law No. 03/L-052 by the Law No. 04/L-273, the SPRK direction shifted from EULEX to a local chief special prosecutor. Following further 2016 amendments made by Law No. 05/L-103, in principle the authority and responsibility of EULEX prosecutors is kept for ongoing cases while a transfer of cases from EULEX to local authorities is under process.

A new department dealing with cases from SPRK is expected to be established at the Basic Court of Pristina.

⁴¹ This includes corruption offences included in Chapter XXXIV of Criminal Code as well as three economic crime offences.

The Standard Operating Procedures (SOPs) on the selection of targets of serious crimes and inter-institutional cooperation that was adopted on 18 July 2014 by the KPC sets a set of criteria to guide the selection of relevant cases to be included in the track record which include *inter alia* serious nature of the offence and the value of the damage caused, organisational level of a criminal group

112. Apart from the KAA, many other institutional mechanisms (the Assembly's Oversight Committee of the KAA, Office on Good Governance within the Office of the Prime Minister⁴², National Council Against Corruption, National Coordinator on the Fight Against Corruption, Anti-Corruption Task Force, the Office of the Auditor General etc. are mandated to fight corruption. It is reported that there is a lack of cooperation between the institutions and that their mandates are sometimes unspecified and overlap which, in turn, hinder their effective performance and collaboration.⁴³⁴⁴ The legal framework defining the organisational setup and powers of the KAA is stipulated in several laws, namely the Law No. 03/L-159 on Anti-Corruption Agency, the Law No. 2004/34 on Suppression of Corruption, the Law No. 06/L-011 on Prevention of Conflict of Interest in Discharge of Public Functions and in the Law No. 04/L-050 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials. Some of them regulate the same areas (i.e. declaration of assets is regulated both in the Law No. 2004/34 on Suppression of Corruption and the Law No. 04/L-050 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials while acceptance of gifts and managing conflict of interest is regulated in the Law on Suppression of Corruption and the Law No. 06/L-011 on Prevention of Conflict of Interest in Discharge of Public Functions).

Ethical principles and rules of conduct

113. Rules of conduct are contained in the Law No. 06/L-011 on Prevention of Conflict of Interest in Discharge of Public Functions, the Law No. 04/L-050 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials, the Law No. 2004/34 on Suppression of Corruption, the Law No. 03/L-159 on Anti-Corruption Agency, the Law No. 03/L-149 on the Civil Service and the Law No. 04/L-043 on Protection of Informants. They include the obligation to protect the public interest and prevent the private interest from prevailing over the public interest, to be accountable for his/her performance of public function, to avoid abusing public function in order to gain unlawful benefits for himself/herself/others, to prevent conflict of interest, to declare his/her assets and assets of his/her family members, to avoid soliciting or accepting gifts related to official duties, for him/herself or close family members, to register gifts that are permitted, to report corruption pertaining to any official act to the KAA and protect evidence of it, prohibition to subject a whistleblower to any retaliatory measures as a consequence of filing a report/disclosing unlawful actions of official or responsible persons. These rules of conduct apply to PTEFs (the Prime Minister, deputy prime ministers, ministers, deputy ministers and political advisors).

114. For civil servants employed in the cabinet of public officials (the Cabinet of the Prime Minister⁴⁵, Office of the Prime Minister and cabinets of the ministers and of the Secretary General of the Office of the Prime Minister⁴⁶ rules of conduct are determined by Regulation No. 04/2015 on Civil Servant Code of Conduct. These include avoiding and preventing conflict of interest, acceptance of gifts, managing state property and responding to undue advantages, conduct towards citizens, political staff and managers, conduct of a manager and a civil servant towards staff, towards the media, duties regarding outside activities. The Code applies not only to civil servants but also to servants employed in the cabinets of public officials, other categories of persons employed by institutions of administration at the central and municipal

involved, need for coordination of investigative actions, need to manage resources during investigation (Article 2 of the SOP). An IT tracking mechanism supports all members of the multidisciplinary team which is coordinated by the Head of the SPRK and includes members from the prosecution, judiciary, police, customs, tax authorities, FIU, AMSCA, correctional service. From 31 cases targeted in May 2016 the total reached 42 cases in June 2018. Out of 33 cases with indictments, 23 of them target corruption with 145 accused persons.

⁴² Is accountable to the Prime Minister – see Article 3 of the Regulation No. 16/2013. The Office on Good Governance in co-operation with the Ministry of Public Administration publishes and promotes code of conduct for Civil Servants in order to inform all civil servants (see p. 3-4 of the Kosovo Integrity System).

⁴³ See report, p. 4, available at www.kipred.org/

See also p. 24 of the SELDI report, available at <http://seldi.net/>

⁴⁴ See p. 8 of the report available at www.legalpoliticalstudies.org/

⁴⁵ Two civil servants are employed within the Cabinet as per Regulation No. 16/2013, Article 14. See also Article 33 of the Regulation No. 02/2011 which stipulates that the officials employed in the cabinets are not civil servants.

⁴⁶ See paragraph 2 of Article 2 of the Regulation.

level, by private organisations that provide services in administration institutions at the central and municipal level, and experts contracted by institutions. Violations of the Code are published in the Ministry of Public Administration's annual reports.

115. Ethical standards for political advisors are regulated by Regulation No. 02/2011 on the areas of Administrative Responsibility of the Office of the Prime Minister and Ministries (see Chapter 4) and in the Regulation No. 01/2012 on Code of Ethics on Communication Officers with Public as a minister may appoint one of the political advisors as a spokesperson⁴⁷. However, these rules only spell out incompatibilities and limitations of the authority given to a political advisor as well as some basic standards of communication with the public.⁴⁸

116. Nevertheless, there are no codes of conduct applicable to the Prime Minister, deputies prime minister, ministers, their deputies, political advisors, heads of cabinets and other public officials who are not civil servants. Therefore, **the AT recommends that (i) a Code of Conduct for PTEFs, including external political advisors be elaborated; and (ii) in order for the provisions of the Code to be effectively applied in practice, an efficient mechanism of supervision and sanction, which takes into account the specific nature of the governmental mandate, be established.**

Awareness

117. The KAA is a central responsible authority for implementation of several laws, pertaining to corruption prevention (i.e. the Law No. 04/L-051 on Prevention of Conflict of Interest in Discharge of Public Functions and in the Law No. 04/L-050 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials). In achieving the objectives of the law, the KAA shall also organise consultations, seminars, workshops and other forms of training (article 23 Law on SC). However, its preventive activities seem to be very limited as the KAA only promotes rules on asset declaration, conflict of interest, gifts etc. that impose obligations on PTEFs through its website (through publication of decisions and opinions issued with regard to concrete cases). There are no dedicated activities (including regular trainings) for promotion of integrity of the PTEFs (or others) carried out by the KAA. Furthermore, the KAA's staff resources seem to be limited as the Department of Prevention of Corruption is responsible for overseeing the property, gifts, prevention of conflict of interest and prevention of corruption in public procurement and corruption in general.⁴⁹ Representatives of KAA further clarified that this Department consists of three units 1) Supervision of Assets Declarations and Gifts (6 officials), 2) Prevention of Conflict of Interest (3 officials) and 3) Prevention of Corruption in Public Procurement (4 officials).

118. The KAA publishes information about integrity and the prevention of corruption on its website (<http://www.akk-ks.org/en/Home>) and its annual reports, opinions and decisions. Although the website is available in various languages (Albanian, Serbian and English) some information seems to be quite outdated in all language versions (e.g. information about awareness raising activities is from 2008). Therefore, the AT encourages the KAA to regularly update their websites and provide as much information as possible to the public.

119. PTEFs can obtain advice regarding integrity dilemmas from the KAA (Article 19 Law on Prevention Conflict of Interest). In 2017, the KAA provided advice on conflict of interest to the Government in 23 cases⁵⁰. No other information pertaining to advice provided to the PTEFs (or the Government) with regard to other scope of the law (asset declarations, gifts) is given in the KAA annual report for 2017.

120. During the on-site visit several interlocutors reported improvement of the work of the KAA and confirmed its independence. It is true, that the KAA significantly increased a number of training in 2017 by providing 65 training for numerous organisations (sometimes for individuals)

⁴⁷ See paragraph 4 of Article 30 of the Regulation No. 02/2011 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries and Article 5 of the Regulation No. 01/2012 on Code of Ethics on Communication Officers with Public.

⁴⁸ See Article 23 of the Regulation No. 02/2011 on the Areas of Administrative Responsibility of the Office of the Prime Minister and Ministries and Articles 3 and 4 of the Regulation No. 01/2012 on Code of Ethics on Communication Officers with Public.

⁴⁹ Annual Report of the Anti-corruption Agency, January - December 2017, p. 4.

⁵⁰ See KAA 2017 Annual Report, pp. 24 and 25.

and training in total 151 officials in various integrity areas.⁵¹ This is five times more as to the frequency of training and seven times more as to the number of officials in comparison with the previous year (in 2016 the KAA reported 15 training with 22 trained public officials).⁵² The KAA also organised Anti-Corruption Week 2017 which included several activities such as Open Door Day at the Anti-corruption Agency and several activities focused on protection of whistleblowers, their role and challenges. However, the AT believes that the lack of capacity is one of the reasons for limited preventive and proactive activities of the KAA. It was also confirmed that no activities are dedicated to promote integrity of the PTEFs and they are not planned.

121. The amendments of the Law on KAA are currently being discussed and their adoption is planned for the year of 2018. The amendments may also include strengthening the role of the KAA in educational activities. Nevertheless, the outcome of such legislative activity is still not certain.

122. The Kosovo Institute for Public Administration (KIPA) operates within the Ministry of Public Administration. KIPA is an agency specialised and mandated to provide training for civil servants, but not to PTEFs. Training activities are financed by the Kosovo budget. Every year KIPA offers training on anti-corruption topics (conflict of interest prevention and resolution, aspects which stem from the Criminal Code, ethics and integrity in public procurement, Law on Conflicts of Interest, Code of Conduct for Civil Servants, Law on Public Procurement, Law on Civil Service etc.). Specifically, the following training is provided: Code of Ethics, Rights and Responsibilities during Civil Service, Conflict of Interest Prevention and Resolution in Public Administration, Ethics and Integrity in regards to Public Procurement issues. Training modules have been developed by the KIPA and trainers recruited; however, anti-corruption modules are usually developed and presented by trainers other than the employees of the KAA. Training is mandatory whereas participation in training is decided by personnel units within each institution of civil service. As the training is dedicated mainly to civil servants, the PTEFs rarely attend such trainings (however, not on integrity and anti-corruption matters, but on other topics such as inter-institutional cooperation etc.).

123. The Plan of Action for the Three-Year Period 2016-2018 for the Implementation of the Strategy on Training of Civil Servants 2016-2020 envisages training on ethics, integrity and transparency in public administration as part of the introductory training for civil servants who start work for the first time in the civil service.⁵³ Such training is held every year and includes topics such as integrity, ethics and conflict of interest.

124. The National AC Strategy 2018-2022 and its Action Plan presume several awareness raising activities such as capacity building of KAA and development of training on the concept of integrity plans and their implementation (I.1.8), training of focal points in public institutions (I.1.8), certification of trainers on ethics and integrity (II.1.5) etc. However, no awareness raising activities envisaged in the National AC Strategy 2018-2022 are dedicated specifically to the PTEFs.

125. The public may be informed about integrity and prevention of corruption mainly through the KAA's website and its annual reports. All the laws, regulations and codes mentioned in this report are also published on the websites of the government and the KAA.

126. The interviews with various interlocutors on-site confirmed that limited attention is paid at present to raising the awareness of PTEFs, not only of their legal obligations, but of the specific integrity challenges of their office. Moreover, with the new LPCI individuals are fully obliged to fulfil many requirements and there are no adequate awareness raising activities planned even though the law has already entered into force. The only group of PTEFs that seem to have some information provided at the beginning of their term are political advisors; nevertheless there is no systematic approach towards this issue either.

127. Based on GRECO's experience it is firmly believed that the government as an institution has to become more proactive in developing the awareness among its members and other PTEFs in respect of specific integrity challenges they may face and in providing them with the necessary training and guidance in particular about ethical dilemmas. In the AT's opinion prevention of corruption, high ethical standards and integrity have to become a priority in

⁵¹ KAA 2015 Annual Report, p. 56, available at www.akk-ks.org/

⁵² KAA 2016 Annual Report, p. 3, available at www.akk-ks.org/

⁵³ See p. 5 of the Kosovo Integrity System document.

practice and one of the cornerstones of performing top executive functions. Consequently, **it recommends (i) to develop efficient internal mechanisms to promote and raise awareness of integrity related matters specifically related to the PTEFs (including confidential counselling and regular training of persons entrusted with top executive functions); (ii) the Kosovo Anti-corruption Agency should be given a clear mandate and a leading role in the area of raising awareness activities; and (iii) to ensure that bodies entrusted with training competences have adequate capacities to be able to perform tasks vested in them in connection with awareness-raising activities.**

Transparency and oversight of executive activities of central government

Access to information

128. Article 41 of the Constitution proclaims the right of access to public documents. Documents of public institutions and organs of state authorities are public, except for information that is limited by law due to privacy, business trade secrets or security classification. The main instrument in this field is the Law No. 03/L-215 on Access to Public Documents (hereafter: LAPD), which applies throughout the public sector and sets commitments for all public institutions, on the one hand to proactively disseminate public information at their disposal and on the other hand, to enable access to public documents based on individual requests.

129. The LAPD lists the information to be published on the internet and provides that public institutions must publish and regularly update information on their website, so that the public may be aware of which kind of data public institutions hold. Public institutions must also inform the public on their rights to access public documents and the manner in which they can exercise this right. Natural or legal persons may apply for access to any "document maintained, drawn or received" by the public institution, without having to justify reasons for application. Exceptions to public access are foreseen to protect certain private or public interest (e.g. secret and personal data, information pertaining to on-going court or administrative proceedings, environment).

130. Public documents access applications are dealt with within 7 days from registration of the application by an officer or unit especially authorised within each public institution to conduct or decide procedures under the LAPD. The absence of a reply equates to a refusal. Application to review the issue is possible with the same public institution and, if the application is again refused, or in case of absence of a reply, initiation of a procedure before the KOI, other public institutions, or competent court is possible. Interlocutors were not familiar with which "other public institutions" could one turn to in case their application is refused.

131. The KOI oversees the implementation of this law on the basis of received complaints, promotes and ensures the right of information of individuals and may issue recommendations to the authorities. In doing so, the KOI accepts and investigates alleged cases of violations or restrictions of the rights of access to public documents. Final reports with recommendations are then adopted and published on the institution's website as well as conveyed to the involved parties. The number of complaints lodged at the KOI against refusal of access to public documents is relatively small, around 25 per year. However, there are several cases where interventions made by this institution remain unresolved due to lack of reaction from public institutions and even the lack of its effective enforcement power. After the on-site visit, the AT was informed about a significant increase of complaints since the Ombudsperson Institution has received 50 complaints regarding refusal of access to public documents since January till mid-October 2018, 45 of them are being now investigated.

132. When access to public documents is granted, an applicant chooses whether to consult the original or a copy, or whether s/he will receive a copy of the document in any available form or format. Regulation No. 02/2012/MF for Fees on Access to Public Documents stipulates fees to cover expenses for production and delivery of copies, based on requests for access to public documents. Consultation of official document in public institutions facilities, scanning of documents that are to be sent via electronic mail and photocopying and printing up to ten pages is provided for free. However, the KOI provides public documents produced or kept by this authority free of charge.

133. A unit or officer responsible for communication with citizens must keep records of the number of applications for access to public documents as well as the number of requests

granted or refused. In 2017, 1 234 requests for access to public documents were submitted to the Office of the Prime Minister, ministries and their subordinate agencies. In 95% cases access to the documents was granted, in 4% it was rejected or unanswered and a partial access was granted in 1% of cases. On a quarterly and yearly basis reports on the implementation of the LAPD are prepared by the units/officers to be submitted to the Office for Public Communication within the Office of the Prime Minister (hereafter: OPC-OPM) which prepares a comprehensive report on the implementation of the LAPD and publishes it (see Regulation No. 03/2010 on the Public Communication Service of the Government). A copy of the report is submitted to the Assembly. The OPC-OPM also prepares an action plan with measures to be undertaken by the public institutions for the implementation of the LAPD. There is no obligation for other institutions to comply with the OPC-OPM decisions or practice – the OPC-OPM only has a coordinating role, without being able to adopt decisions that would apply to other government institutions. This allows for different practices within ministries

134. Regulation No. 04/2012 on Official Evidence of Requests for Access to Public Documents prescribes the content of official records kept by public institutions regarding exercise of a right to access to public documents as well as templates of requests, registrations of requests, decisions on requests etc.

135. Regarding the Government specifically, those government materials covered by the Regulation No. 05/2016 on Minimum Standards for the Public Consultation Process that are to be dealt by the Government are published on the online platform and, after its adoption, in the Official Gazette or on the government websites (Legislative Program, regulations etc.). These rules are followed in practice, however it is difficult to monitor to which extent a legislative program of a certain ministry has been fulfilled.

136. Government meetings are public and the media is invited to be present at the beginning of the Government meetings, while the rest they may broadcast live. Government documents may be accessed by the media on the basis of provisions of the LAPD. A response should be given within 7 days. If there is no reply or access is denied, an appeal is possible to the KOI for assistance and to initiate court proceedings.

137. Some authorities, including the OPM and the MoJ, report that the sub-legal acts are published on their respective websites, but only the MoJ publishes also data on its spending. Expenditures of individual PTEFs seem to have triggered conflicting opinions of the National Agency for Data Protection and the KOI, the former regarding such expenditures as personal (due to cultural, religious issues) and the latter opting for their publication. Not all annual reports of ministries are published (see below paragraph 137). Much more should be done in order to harmonise the practice of different ministries, as currently the OPC-OPM only has a coordinating role and does not have any instruments to oblige other governmental institutions to act in accordance with its opinions or decisions. Sometimes access to public information is denied because documents requested are classified as not public. Interlocutors pointed out that no clear criteria exist for classification of documents and that sometimes documents are classified as not public after a request for access has already been made. Furthermore, there is a lack of expertise among those civil servants who are deciding on granting/refusing access to public documents, especially lack of expertise in partial anonymisation which also hinders access to public documents.

Transparency of the law-making process

138. Law No. 03/L-189 on the State Administration in its Article 6 stipulates that the work of administration bodies is public. Ministries and the Office of the Prime Minister are the highest state administration bodies (Article 2, paragraph 1)

139. According to Article 5 (indent 4) of the Law No. 06/L-011 on Prevention of Conflict of Interest in Discharge of Public Functions, PTEFs as senior officials should act with transparency during the discharge of public functions and should respect the rights of representing bodies as well as of citizens to be informed about their performance as public persons.

140. A series of texts, among which are the Government Regulation on Rules and Procedures, Law No. 04/L-025 on Legislative Initiatives, Law on Official Gazette, Regulation (GRK) No. 05/2016 on Minimum Standards for Public Consultation Process, Administrative Instruction (MPA) No. 01/2015 on the Web Sites of Public Institutions and Administrative Instruction No. 03/2013 on Standards for the Drafting of Normative Acts organise publication of legislative material on website and public participation and strengthen transparency of the

legislative process. Accordingly, the general public must be enabled to comment in writing on a draft regulation within 15 working days to 60 calendar days from the notification date for opening consultation in writing.

141. The public is informed of planned legislative work through taking part in public consultations with regard to drafting a draft annual work program of the Government (see below paragraph 142 and following) and through publication of the Government Annual Work Program (which includes tables with Government and Sector priorities, Strategic documents Plan and a List of Concept Documents) with the Legislative Program annexed to it on its official website and the Official Gazette (Article 74 of the Regulation of Rules and Procedures). The obligation to involve the public in drafting its annual work program and to make it publicly available on its official website applies also to all ministries. (See Administrative Instruction (MPA) No. 01/2015 on the Web Sites of Public Institutions which prescribes content of the website of each public institution, including the public institution's work plan for the calendar year as well as draft normative acts for the purpose of public consultations in accordance with existing legal norms for drafting legislation process (see Article 9).

142. On the basis of the Administrative Instruction No. 01/2015, web sites of public institutions must *inter alia* contain draft normative acts for the purpose of public consultations in accordance with existing legal norms for drafting legislation process, strategies and other policy documents, information related to all existing permits and licenses issued, suspended or revoked by the public institution, annual reports, approved annual budget, records on institution's expenditures, public procurement annual plan.

143. Most draft legislation is published by ministries or the Government after adoption and by the Assembly as drafts and adopted acts. The Government informs the public and media about its work and decisions. The Government's meetings are public unless the Government decides to close part of or the whole meeting. Minutes of Government's meetings are confidential and shall be noted as such (Article 23 of the Regulation of Rules and Procedure of the Government, No. 09/2011). The Government's annual report is published before 1st March for the previous year.

144. Citizens may take legislative initiative as per the Law No. 04/L-025 on Legal Initiatives by submitting to the Assembly either a draft law or a proposal to draft a law with reasoning of the objectives of the draft law/proposal and a list of 10,000 signatures after a list with 10,000 signatures has been verified by the Central Election Commission (Article 10, 12 and 17). The Assembly may ask the Government for its opinions and statements with regard to the draft law (Article 20) or, in case a proposal to draft a law has been submitted to the Assembly, it may request the Government to draft the relevant law. The representative of the legislative initiative of the citizens shall be invited to participate in relevant working groups (Article 21).

145. Regulation (GRK) No. 05/2016 on Minimum Standards for Public Consultation Process adopted by the Government ensures and promotes public consultations by defining minimum standards, principles and procedures of the public consultations process between public authorities, interested parties⁵⁴ and the public in the process of drafting policy and legislation. The main standards set for ensuring public consultations are held in a transparent manner by ensuring equal opportunities for non-discriminatory participation of interested parties and the public in the process, informing them in the official languages of the initiative for policy and legislation, and providing all necessary information in a comprehensible form so that its content and expected impact are understood by the public and interested parties. The standards apply to all public bodies, also to the Government and to all documents, drafting of which requires public consultation. Public bodies are obliged to publish draft proposals on their official website and use other forms of dissemination of information. Involvement of the public and interested parties at the earliest stages of the decision-making process (which, as per the regulation, includes planning, drafting and adoption of policies and legislation by public bodies – subparagraph 1.6 of Article 3) shall be ensured by public bodies. Active partnership of the public and interested parties should be ensured by public bodies through taking all necessary actions.

146. The minimum standards for public participation are:

⁵⁴ Regulation (GRK) No. 05/2016 defines an interested party as "any person, public body, organisation of civil society, interest groups, and other entities that are affected by or are interested directly or indirectly in the policy and legislation".

- As a rule, the public must be allowed to comment on a draft law or regulation within 15 working days from the notification date for the opening of consultations. For acts which are particularly complex or important the deadline for submission of comments may be extended up to 60 calendar days. Exceptions are draft regulations that do not allow participation by their very nature, such as urgent procedures including the use of provisional measures and other exceptional situations defined by law.
- The consultation document should include at least a brief description of the content of the document, a brief description of the problem which the document deals with, the purpose of the consultation process, and a list of the main issues that are part of the document.
- After the consultation process is completed, the final report of the public consultation should include data from the consultation process relying on the comments received and how these issues were addressed. The report shall be prepared in the form as specified by the Rules of Procedure of the Government.

147. Public participation is compulsory for all primary and secondary legislation⁵⁵. Acts which require public consultations include draft annual plans of public bodies, draft annual strategic document plans, draft legislative programme of the Government, draft plan of the secondary legislation, draft list of concept documents, draft concept documents, draft normative acts, draft strategies and all other documents which must be accompanied by explanatory memorandum or to which public consultation is required (Article 5).

148. According to Article 32 of Rules and Procedure of the Government, in relation to any proposal for which a concept document is required, in addition to consulting other ministries and public administration bodies, the originating ministry shall publish the substance of its proposal for public comment and shall specifically seek the comments of any non-governmental organisation that would be substantially affected by the proposal.

149. Public consultations take place in the form of consultations in writing and electronically, publication on the website, public meetings, conferences and meetings with groups of interests, workshops, interviews, opinion surveys, discussion voting, panels involving citizens and street stands. Enough time should be secured to the public and interested parties to submit their comments to the proposing body, whatever form of public consultations is applied in practice. Timeframes vary from 15 working days from the day of notification to 60 calendar days for more complex matters (consultations in writing), not less than 7 calendar days before the public meeting takes place. In both cases the public body has to provide draft proposal, information regarding the draft proposal that allows the public and interested parties to understand the issues to be discussed.

150. The online platform⁵⁶ developed and maintained by the Office on Good Governance facilitates identification of interested parties and the public by enabling them to express their interest to participate in the public consultation by identifying each governmental unit and each project proposal they are interested in. The public platform also facilitates publication of annual reports on public consultations that took place and reports on projects and results of projects and communication between the public and interested parties with the proposing body. When planning the public consultation process the official responsible should identify interested parties and the public and determine the manner in which relevant responses are collected. Comments received during the public consultation process shall be collected by the responsible official in a structured and transparent manner. Comments should be reflected in the final report of the public consultation. Several interlocutors have praised the online platform for increasing the transparency of the public consultation process. However, the online platform is still being developed and some deficiencies are being detected (i.e. a final report on public consultation process is lacking, a summary of proposals and those that were taken into account/refused is missing).

151. A process of drafting a law requires an initial phase to be implemented, that is to hold public meetings with the interested parties that expressed their interest for the involvement in the drafting process. The main issues that will be included in the project proposal are discussed, together with the rationale for the drafting. The interested parties may provide their initial

⁵⁵ It is regulated by Regulation No. 05/2016 on minimum standards for public consultation process.

⁵⁶ Called "Platform of Public Consultations – Make your voice heard", available at <http://konsultimet.rks-gov.net/>

opinions. After the initial draft proposal has been drafted and initial consultations with other state bodies has taken place, a consultation in writing shall be conducted (Article 13) Once the comments are received by the proposing body, they are discussed within the institution and included in the final report of the public consultation, indicating the position of the proposing body with regard to a particular comment received. Authorities, however, report that in some cases stakeholders and civil society were invited to take part in working groups already at the drafting stage of a legal act.

152. The authorities report that in 2017, in 88% of cases documents passed also the consultation process and in 12% of cases that was not the case. Over 50% of those documents that were the subject of consultation met the minimum requirements for public consultation.

153. If members of the public or interested parties believe that the public body has violated the right to a public consultation, they may file a request in writing to the body responsible for monitoring the public consultation process (i.e. legal departments of the proposing body), to take appropriate actions.

154. Office on Good Governance of the Office of the Prime Minister prepares, in cooperation with responsible officials for public consultations, an annual report on implementation of the regulation on public consultation process.

155. The Law No. 03/L-190 on Official Gazette envisages that the Prime Minister can request the publication of sub-legal acts of the Government and ministries (Article 4). This is done in practice, also through their publication on the online platform.

Third parties and lobbyists

156. There is no regulation on lobbying in Kosovo. Moreover, public hearings and other meetings of working groups are used a lot for lobbying on different issues pertaining to the legislation being discussed.

157. The main principles of performing public functions for senior officials are set in Article 16 of the Law No. 06/L-011 on Prevention of Conflict of Interest in Discharge of Public Functions (LPCI). According to Article 16, PTEFs as senior officials have to notify in writing their manager of managing body about an attempt to influence his/her volition. The same applies in case one directly or indirectly influences the senior official in order to vote or take a particular decision. In cases of attempts or influence a senior official must refuse an offer, try to identify the person if an offer is made anonymously, when impossible to return a gift received, report it in writing to his/her manager and hand it over and indicate a witness to the event. If voting and decision-making process are concluded to be in contrary to the senior official's volition, the decision should be considered annulled by the decision which rendered it.

158. The AT considers that PTEF contacts with third parties ought to be regulated and made more transparent, given the importance of this issue in preventing corruption in government and top executive functions and European standards in this area.⁵⁷ Therefore, **the AT recommends that (i) detailed rules be introduced on the way in which PTEFs interact with lobbyists and other third parties seeking to influence the government's legislative and other activities; and (ii) that sufficient information about the purpose of these contacts be disclosed, such as the identity of the person(s) with whom (or on whose behalf) the meeting(s) took place and the specific subject matter(s) of the discussion.**

159. As regards the legislative footprint, the Government Regulation on Rules and Procedures foresees in its Article 44 an obligation for all persons engaged in the drafting of legislation as well as in organising or financing the drafting of legislation to regularly, at least once per month, provide the Director of the Legal Office with a written notice, providing also the names and contact information for all persons involved. In practice, such contacts are not duly registered and it is often left to a civil servant to decide whether and to what extent to register persons that established contacts and what their content was.

⁵⁷ See Recommendation CM/Rec(2017)2 of the Committee of Ministers on the legal regulation of lobbying activities in the context of public decision making.

Control mechanisms

160. The National Audit Office (NAO) is the highest institution of economic and financial control, which under the Constitutions and law enjoys functional, financial and operational independence. It is accountable to the Assembly and publishes its annual reports that are delivered to the Assembly. The National Audit Office is an independent institution which supports its head, the Auditor General in performing his/her duties. The NAO has a full mandate to access any information regarding the government's business operations and supervise the state budget and all public spending in Kosovo. Annually it carries out a statutory regularity audit (performance and regularity) of the budget of the Government. It decides *ex officio* to carry out regulatory and performance audits and may audit any act in the context of a past or planned business operations by any user of public funds. That includes governmental decisions, policy-making as well as the use of official funds by PTEFs. NAO is obliged to annually carry out statutory regularity audit of the Governments Report on the Kosovo Budget as well as of all budget organisations that directly have received a budget in the Annual Budget Law and are required to produce annual financial statements. According to article 31 of the Law No. 3/L-048 on Public Financial Management and Accountability, the Auditor General shall prepare and submit to the Assembly a report on the financial statements of budget organisations and public undertakings for the previous fiscal year. This report shall provide the Auditor General's opinion on whether or not the financial statements give a true and fair view of the finances of such budget organisations and public undertakings. The Auditor General shall have unrestricted access to all information and explanations that in his/her judgment are necessary for the purposes of the audit.

161. The KOI monitors the implementation of the Law on Access to Public Documents, based on complaints received. According to a report⁵⁸ the number of complaints lodged at this institution against refusal of access to public documents was relatively small in 2015. As per yearly reports of the KOI, the number of complaints dealt with in 2015, 2016 and 2017 were respectively 23, 26 and 25. This number seems to have increased in 2018 (by October 2018, 50 complaints were received). Also, several cases remained unresolved, although this institution intervened. Recommendations of the KOI are not always taken into consideration and considered by public institutions. In the Strategy and Development Plan of KOI 2017-2019 one of the measures foreseen is "blacklisting" those institutions that do not respond to the KOI's request in investigation procedures, which is obligatory. Such breaches are reported by the KOI in its yearly reports, media outlets and on its website. A lack of its effective enforcement power (the KOI does not have a competence to issue fines) was noticed as well and no data of enforced sanctions (fines) in application of Article 27 of the Law No. 03/L-215 on Access to public Documents was available. What seems to hinder better implementation of the Law on Access to Public documents is also lack of awareness among the citizens to have a right to request public documents as well as discouragement (by delaying with responses to requests for access) of the citizens to do so. Another problematic issue are cases where authorities deny access to certain documents stating that the documents requested are classified although that is not the case. It seems also that authorities sometimes do not classify documents at the time of creation but at a later stage when access is requested which also creates confusion whether a certain document is public or not. Currently the Law on Access to Public Documents is being amended. The new draft Law No. 06/L-081 foresees that the competences for overseeing and ensuring its implementation and imposing measures will be entrusted to a Commissioner which is an independent body within the Information and Privacy Agency and is appointed by the Assembly. The power of the KOI to supervise the police is discussed below and a mechanism for strengthening the KOI's powers of recommendation generally is put forward (see paragraphs 385-391 below).

162. A new draft Law No. 06/L-082 on Personal Data Protection⁵⁹ is also under the Assembly proceedings. It will establish the Information and Privacy Agency which will be responsible for supervision of rules on personal data protection and access to public documents and will be led by a Commissioner. The body may impose sanctions (fines) for breaches of law.

163. Public Procurement Regulatory Commission (hereafter: PPRC) is an independent regulatory agency responsible for the overall development, operation and supervision of the public procurement system in Kosovo. The PPRC monitors procurement and contract management activities of contracting authorities, including the Government and ministries as

⁵⁸ See pp. 73, 87-89 of the report, available at <https://rm.coe.int/16806dc9f9>

⁵⁹ See the draft Law at: <http://ligjet.kuvendikosoves.org/>

well as the Office of the President. It also issues opinions to contracting authorities regarding their decisions, actions and omissions during procurement and contract management activities. Public Procurement Register is established and maintained by the PPRC in order to serve as repository for electronic copies of all documents issued in connection to every procurement activity conducted or initiated by a contracting authority (Article 87). It is available to the public. The PPRC also publishes information about public procurement procedures and awarded public contracts. The Central Procurement Agency is responsible for a centralised procurement system which is electronic as of 5th July 2018. As of 1st September 2018, also procurement activities with regard to large value contracts⁶⁰ have become entirely electronic including the submission of bids. On the website (available at www.e-prokurimi.rks-gov.net) one may access to notification to sign a contract as well as to a signed contract.

164. The monitoring function of the Assembly includes the setting up of parliamentary enquiries, votes of no confidence in the government or ministers and constitutional proceedings against the President. No parliamentary enquiries against PTEFs have been initiated in the last 5 years.

165. The Assembly may appoint main, functional and *ad hoc* committees, also committees on specific matters (including enquiry matters), composed of deputies on a proportional and parity basis; one such main committee is the Committee on Budget and Finance while the Committee on Oversight of Public Finance is one of the functional committees. An Investigative Committee is an *ad hoc* committee established to review a specific issue. Such committees carry out investigations into matters of public interest, in order to identify irregularities committed by holders of public functions.⁶¹

166. Six MPs, a permanent Parliamentary Committee or 1/3 of members of the Assembly have the right to initiate the procedure for establishing an Investigative Committee. The Committee is composed of 7 to 15 members of Parliament (MP) on a proportional and parity basis. The Committee will collect evidence to assess the flow of events in order to clarify what has happened and to define responsibilities of the involved parties. In order to fulfil its investigation, the Investigative Committee has the right: to summon holders of public functions and other natural and legal persons to give evidence under oath before the Committee; to access all relevant information and official documents to the investigation; to request hearings of evidence in a compulsory manner; to establish working groups to develop specific investigations from the members of the Committee; to ask for additional external expertise when necessary. This being said, Article 71 of the Rules of Procedure of the Assembly of Kosovo (2010), on the powers and special procedures regarding *ad hoc* investigative committees does not make it sufficiently clear to what extent and in what terms the summoned institutions, bodies, offices and agencies are obliged to collaborate with parliamentary investigation committees in providing such information.

Conflicts of interest

Legal framework, general rules

167. Conflicts of interests are regulated by the recent Law No. 06/L-011 on Prevention of Conflict of Interest in Discharge of Public Functions (hereafter: LPCI) which contains key provisions for preventing, managing and resolving conflict of interest. In comparison with the previous Law, the new one significantly broadens the scope of managing conflict of interest. According to Article 3, the definition of senior public official is derived from the LDCP and all PTEFs are considered as "senior public officials" and therefore fall under its scope with exception of external political advisors whose status in practice is not entirely clear within the public service. The definition of a person related to an official was significantly broadened and includes also relative of the spouse's side up to the second level and every legal or natural person who has had or has a joint pecuniary or non-pecuniary interest with the official. The new law was prepared following consultations of various experts and in general is a significant step forward.

⁶⁰ Large value contracts: Supply or service contracts that are equal or greater than EUR 125,000 and work contracts that are equal or greater than EUR 500,000.

⁶¹ A request for an investigative committee to be established has been made by 40 MPs in April 2018, against the current President of Kosovo, for recruitment of a lobbyist for his lobbying activities with the Kosovo Government, at the time he was still Prime Minister.

168. Conflict of interest is defined in Article 6 as a situation which “may result from circumstances in which an official has a private interest, which influences, might influence or seems to influence the impartial and objective performance of public duties”. This definition is in compliance with the definition of Council of Europe.⁶² Private interest is defined as a pecuniary or non-pecuniary benefit of an official or a person related to him and public interest is defined as lawful and just material or immaterial interest to the benefit of citizens (LPCI, Article 3). Although the definition regulates the matter as a conflict between public and private interest, it was stated already in 2014, that “During the course of law implementation, the KAA has brought numerous decision to prevent conflict of interest not only in cases with clear delineation of public sphere and private one, but also for those involving public sphere only.”⁶³ There is no guideline for PTEFs with clear instruction what to do in case of conflict of interest and specifically conflict of interest between two official positions. However there is expectation from the public that by introducing more restrictions on the possibility of performing more than one function this issue will be diminished in the future. It is also believed that the situation is clearer due to individual opinions of the KAA issued in concrete cases.

169. An official shall above all else exercise his/her function in compliance with the Law and with the appropriate Code of Conduct, protect the public interest, avoid conflict of interest regardless if the conflict is actual, potential or apparent and shall be held responsible for his/her actions during the discharge of functions entrusted to him by an institution or by citizens (Article 5 LPCI). Any person who has knowledge or suspicion about conflict of interest of any official shall notify the official’s employer or the KAA and whistleblowers shall be protected according to the Law No. 04/L-043 on Protection of Informants (Article 7). However, many interlocutors during the on-site visit confirmed that the Law on Protection of Informants is better on paper than in practice and that its enforcement is very poor. Therefore it is welcomed that the government has prepared and adopted new law on whistleblower’s protection. This Law has not been adopted by the Parliament yet; hence the authorities are encouraged to support its adoption and full enforcement once it enters into force. The new draft Law on Protection of Whistleblowers is further discussed at paragraphs 300-400 below.

170. A public official is obliged to personally prevent and resolve in a most plausible and effective way any situation of his/her conflict of interest and in case when public official has suspicion or determines conflict of interest has occurred or may occur, such situation shall be discussed as soon as possible with superior, managing body or the KAA and action has to be undertake within 30 days (Article 8 LPCI).

171. In order to prevent conflicts of interest, the LPCI also contains restrictions on business activities and post-employment restrictions (see below).

172. Law on Suppression of Corruption (LSC) focuses on conflict of interest which applies to all official persons and for the situations when conflict of interest has already taken place. According to its Article 24 in case of conflict between private and general interest, the official person is required to act according to the general interest. However, the definition provided by this law is limited to interest of the official person or to the person living with him/her in the domestic relationship.

173. Conflict of interest is also addressed in the Law No. 03/L-149 on the Civil Service (LCS) and the Civil Servants Code of Conduct. According to Article 5 of LCS “civil servants shall not allow their private interest to interfere with their public position and shall abstain from performing any private or public activities that are incompatible with their public position and might generate conflict of interest”. The Civil Servant Code of Conduct regulates the prevention of the conflict of interest (Article 14) and avoiding the conflict of interest (Article 15), nevertheless these provisions are applicable only to civil servants – persons employed to exercise public administrative authority.

174. Besides the Civil Servants Code of Conduct, Procurement Code of Ethics applies to all public servants, civil servants and other persons employed by the contracting authorities. Section 5 provides that procurement officers shall exercise particular care so there is no detrimental effect to their organisation which results from conflict of interest between their

⁶² Compare with Article 13 of Recommendation No. R (2000)10 of the Committee of Ministers to Member states on codes of conduct for public officials.

⁶³ Fight against Corruption and Organised Crime, Input for the Progress Report in 2014, p. 14 (available at <http://kfos.org/>)

personal interests and those of the organisation. An individual is considered to have a conflict of interest when s/he, or any of her/his family members or associates has an existing or potential or other interest which impairs or might impair the individual's independence of judgement in the discharge of responsibilities to the organisation or may receive a material, financial or other benefit from knowledge of information which is of a confidential nature. However, the PTEFs are not procurement officers and therefore this Code of Conduct is also not applicable to them.

175. Due to regulation of conflict of interest in many different provisions, inconsistencies in terminology can be seen. In the Criminal Code (hereafter: the CC) the Article 424 refers to "An official person (...), a member of the family or any related legal person", while the Law No. 2004/34 on Suppression of Corruption in its Article 24 applies to "official person or the person living with him/her in the domestic relationship" and the LPCI provides the widest definition with "person related to official". Such inconsistencies create doubts as to the scope of the law and weaken its effectiveness.

Disclosure of interests

176. Each PTEF is obliged to personally prevent and solve any situation of conflict of interest. When in doubt, the situation should be discussed with the immediate manager or managing body for conflict of interest or, in most cases of PTEFs, directly with the KAA. In case of the minister it can be both the Prime Minister and the KAA.

177. Disclosure of interests is based on preliminary *ad hoc* self-declaration on basis of the PTEF's knowledge and it should be done in good faith of the existence of his/her private interests or those of persons related to him/her that might give rise to conflict of interest and PTEF is obliged to withdraw from decision-making in such a situation (Article 17 LPCI). This self-declaration shall be in writing when an official is included in a decision-making process for particular issues.

178. The KAA is assigned to be the central authority which is responsible for supervising the implementation of the LPCI and its duties and powers are defined in Article 21. The KAA assists in the preparation and improvement of policies, provides professional and technical assistance in counselling and supporting legal and sub-legal initiatives, offers recommendations to the Assembly about the assessment of the draft laws, performs administrative investigation, provides advice to senior officials (including PTEFs), managers and managing institutions, and initiates legal actions in competent institutions. The LPCI also provides for three types of actions for the KAA such as decision, recommendation and opinion. However, the question whether the KAA is implementing or interpreting law has been raised in the past.⁶⁴

179. The authorities responsible for implementation of the LPCI in institutions are direct managers of officials, according to hierarchy, within an institution as well as institutions and managing authorities according to law. Institutions within their internal regulations shall prescribe and implement specific rules in order to prevent conflict of interest, depending on the field of activity of such institution. In carrying out their duties, responsible institutions have to gather and receive information from legitimate sources, verify the reliability of sources and information collected, make the official aware and respect his/her rights of defence and duly notify the reporting person. They shall register the private interests of an official, undertake appropriate measures to resolve conflict of interest and report to the KAA within the time frame set by it. The authorities have to submit to the KAA each year for the previous year, but no later than January 31, a report on the activity carried out in implementing this law.

180. In 2017 the trend of decreasing number of reported cases to the KAA continued as 166 cases were reported to the KAA, out of which 81 involved the government.⁶⁵ In 2016, the KAA handled 210 suspected cases for conflict of interest and 91 of them involved Government. However in 2015 the KAA received nearly half of the reports (47) regarding the Government although the total number of reports was higher – 306⁶⁶ and in 2014 it was 65 reports regarding the Government out of 264 reports in total⁶⁷.

⁶⁴ Fight against Corruption and Organised Crime, Input for the Progress Report in 2014, p. 14 (available at <http://kfos.org/>)

⁶⁵ KAA 2017 Annual Report, p. 25, available in Albanian only at www.akk-ks.org/

⁶⁶ KAA 2015 Annual Report, p. 24, available at www.akk-ks.org/

⁶⁷ KAA 2014 Annual Report, p. 30, available at www.akk-ks.org/

181. Table of cases in 2015⁶⁸, 2016⁶⁹ and 2017⁷⁰:

	Cases reported for CoI	Cases that avoided CoI	Cases without CoI	Cases under proceeding	Cases proceeded for investigation	Request for Dismissal/Misde meanour	Opinions-Advice
2015	47	13	9	3	1	1	20
2016	91	49	3	10	0	1	28
2017	81	35	9	15	0	1	21

Recusal

182. Under the LPCI a public official should avoid conflict of interest regardless if the conflict is factual, potential or apparent and prevent and solve any situation of his/her conflict of interest. In cases when conflict of interest has occurred or may occur, the new law introduces an obligation of an official to suspend all actions related to this issue, until a relevant decision is made in connection with the case (Article 8). Article 19 of the LPCI also focuses on measures for prevention and resolution of conflict of interest.

On the basis of the case and circumstances the official is obliged to undertake the following actions:

- 1) transfer of his/her private interest and rights in management of enterprises;
- 2) self-exclusion from decision-making;
- 3) resignation from duties, functions or activities that are in conflict or incompatible;
- 4) resignation from public function.

Moreover, the law requires from superiors or institutions to avoid in advance real or potential conflict of interest through the use of graduated and proportioned measures aiming at ensuring:

- 1) limitation of certain information to the official or avoidance of duties that causes conflict;
- 2) exclusion of an official from decision-making;
- 3) review or change of duties of an official;
- 4) avoidance of appointment or election of the official in functions in which conflict may exist or arise;
- 5) revocation or cancellation of an act taken under conflict of interest.

The manager shall inform the KAA.

183. Violations of the provisions of this Law are considered as misdemeanours (unless they constitute a criminal offence) with various sanctions. Monetary sanctions start from EUR 500 and can rise up to EUR 15,000, however for many offences the sanctions were lowered from EUR 2,500 to EUR 2,000. The reasons provided seem to resemble the tendency to unify the sanctions among various laws. However, their effectiveness, dissuasiveness and proportionality can be questioned. Courts may punish breach of this law also with a protective measure of prohibition of exercise of public functions in duration from 6 months up to two years.

184. Last but not least, apart from the administrative procedure and sanctions a conflict of interest might also constitute a criminal offence as is stated in Article 424 of the CC:

- “1. An official person who participates personally in any official matter in which he or she, a member of the family, or any related legal person, has a financial interest shall be punished by a fine or imprisonment up to three (3) years.
2. When the official matter is a procurement action or public auction, the perpetrator shall be punished by imprisonment of one (1) to five (5) years.
3. For purposes of this Article, “participates” means exercising official authority through decision, approval, disapproval, recommendation, rendering advice, investigation, or otherwise exercising influence over an official matter.
4. For purposes of this Article, “official matter” means a judicial or other official proceeding; an application, request for a ruling or other official determination; a contract or claim; a public auction or other procurement action; or, another matter affecting the financial or personal interests of the official or another person.
5. For purposes of this Article, “related legal person” means any legal person in which the official or a member of the family has a financial relationship, including a relationship or a prospective relationship as a responsible person or employee.”

⁶⁸ KAA 2015 Annual Report, p. 24

⁶⁹ KAA 2016 Annual Report, p. 20, available at www.akk-ks.org/

⁷⁰ KAA 2017 Annual Report, p. 25

185. The role of the KAA has been recently put to the test when the Prime Minister decided to increase the salaries of his staff. The KAA published an opinion⁷¹ qualifying the decision as illegal and in violation of the (previous) LPCI. Nevertheless, the Government stated that the opinion of the KAA is only advisory and not binding. The opposition referred this matter to the Constitutional Court.⁷² The Prime Minister decided to temporarily suspend his decision until the Constitutional Court reviews the case⁷³, but nevertheless his attempt to raise his own salary by approximately 50% and the non-binding opinion of the KAA raised concerns regarding the procedural matters in cases when possible conflict of interest had already resulted in a decision.

186. The new LPCI had been discussed with many interlocutors and it became clear that on the one hand many of them appreciated its adoption and had trust that this law could bring the change in respect of conflict of interest in Kosovo; on the other hand the AT was astonished by the lack of awareness and the absence of enforcement of this law which had already entered into force. Without any doubt, this law was adopted in a very short time and institutions are not yet fully prepared to enforce it. Moreover, many officials were not even aware of the fact that the law is already in force and even though the law states that officials shall act according to their Code of Conduct, clear rules are set only in the Code of Conduct for Political Advisors. A similar lack of awareness appears to exist in the police and is discussed below (see paragraph 365). The AT welcomed additional information that awareness raising activities regarding conflict of interest are foreseen and that KAA issued an official memorandum to all public institutions to inform them about the new LPCI⁷⁴; nevertheless, there is still urgent need to ensure practical application of the new law. Consequently, **the AT recommends to take appropriate measures to ensure effective supervision and enforcement of the new law on prevention of conflict of interest.**

Prohibition or restriction of certain activities

Incompatibilities, outside activities and financial interests

187. The LPCI provides actions that are forbidden for senior officials (Article 9) and those that are allowed without any limits (Article 10) such as activities in the area of science, sport, education, culture and humanitarian activities. The general framework of prohibited work for official is defined as work that can affect impartiality, undermine compliance with the principles of free competition, may damage reputation of the institution or is related to personal matters in subordinate institution (Article 11). In general, the Civil Servants Code of Conduct prohibits engagement of civil servant in outside activity that impedes or affects in any way the realisation of objectives of the institution (Article 16).

188. Moreover, public officials, including PTEFs, are not allowed to exercise certain professional activities (e.g. advocacy, notary, insolvency administration), be employed full time in another job (Article 12), be in general a manager or an authorised representative or a member of managing or supervising body of private legal profit-making as per Law on business organisations and non-governmental organisations (exceptions defined in Article 14); s/he also cannot be a member of more than one steering body of a public owned company, joined shareholding company in public ownership as well as bodies of other public institutions (Article

⁷¹ Available in Albanian at www.akk-ks.org/

The opinion states the existence of case-by-case conflict of interest in the voting and the adoption process of the Government Decision No. 04/20 for those senior officials who were involved in the decision-making process.

⁷² Government insists pay rise is legal after Anti-Corruption body ruled as illegal, published on 29 January 2018, available at www.gazetaexpress.com/

⁷³ Kosovo Prime Minister suspends his pay raise, published on 31 January 2018, available at <http://prishtinainsight.com/>

Upon the request of 31 members of the Assembly, in June 2018 the Constitutional Court issued the Decision AGJ 1258/18 (available at <http://qjk-ks.org/>) in which it held that the contested Government Decision is not in contradiction with the Constitution. The Constitutional Court noted however the absence of a law on salaries and emphasised the necessity that the issue of salaries in the public sector be regulated comprehensively through a special law as is the practice in other consulted member states of Venice Commission.

⁷⁴ In August 2018 the KAA has issued a Regulation on declaration and registration forms of conflict of interest.

13). Various interlocutors shared their optimistic view that the hitherto common practice of cumulative official positions may be significantly reduced in the future and therefore many issues that were raised in the past may be limited in the future.

Contracts with state authorities

189. The PTEF or the enterprise, where a PTEF owns a share or parts of property, which are being managed by his/her trusted person or relative, has no right to establish contracts with or gain assistance from central or local institutions where he/she exercises a public function. If a senior official acts in contradiction to this provision, the KAA should request from the competent body to cancel the contract with the enterprise and return any undue advantage (Article 13).

Gifts

190. According to Article 33 of the LSC, an official person shall not accept gifts or other benefits in connection with their execution of office, except for formal gifts and occasional gifts of small value. Occasional gifts of small value are gifts presented at various working and personal jubilees, holidays and similar occasions, and shall not exceed EUR 50 in value, or their total value shall not exceed EUR 100 in a single year if they are presented by the same person. Official persons may not accept more than 10 occasional gifts a year.

191. The recent LPCI (Article 3, paragraph 1.11 LPCI) provides that a gift shall be defined under the relevant provisions in the Law on the Declaration, Control and Origin of Property. The draft version of LPCI included a more elaborated definition of a gift, as an item, a right or service gained or which is performed without compensation and any undue advantage given to an official or the person related to him connected to the discharge of the public function, including promises, favours or preferential treatments. This definition was not approved. However, the current Law No. 04/L-050 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials does not contain a definition of a gift *per se* but elaborates on different types of gifts, in various provisions as discussed below (see paragraphs 193 and following).

192. The new LPCI contains very clear provisions in Article 9 forbidding the request, acceptance, promise, offer or giving of gifts or undue advantage whether for oneself or another, in order that the official acts or refrains from acting in the course of his public duties. This provision applies to all official persons as defined in the Criminal Code and not merely senior officials as was previously the case. Breach of the provisions is an administrative offence where it is not a criminal offence; of course, such acts may amount to the criminal offences of active or passive bribery. Both the old and the new laws require attempts to influence the senior officials to be notified to the manager as well as for the gift to be refused, returned or handed over to the manager (Article 16).

193. Law No. 04/L-050 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials (LDGP) further stipulates "Official person shall not solicit or accept gifts or other favours, neither for him/her nor for his/her close family members, related to exercising official duties, which influence or may have an influence on the exercise of official duties, except protocol gifts or casual gifts" (Article 11). Protocol gifts are further specified as gifts brought by representatives of foreign countries and of international organisations during visits and other events and gifts brought in similar situations. Casual gifts are small gifts at a value up to EUR 25, while taking into account that official shall not receive casual gifts in the total value which exceeds EUR 500 within a year (Article 11, paragraph 2.a⁷⁵).

194. However, the qualification that the solicitation or acceptance of a gift is prohibited only where it is made in order that the official acts or refrains from acting in the performance of his public duties or which influences or may have an influence on the exercise of official duties undermines and weakens the prohibition. Such a qualification was not to be found in Article 33 of the LSC but is contained both in the more recent LPCI and LDGP. Such a provision makes a breach of the provision difficult to prove. In effect, proof of an intention to corrupt the official is required otherwise the payment and receipt is not unlawful.

⁷⁵ This provision has been amended with Article 6, paragraph 1 of the Law No. 04/L-228 on Amending and Supplementing the Law No. 04/L-050 on Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all Official Persons.

195. Monetary gifts, securities and precious metals regardless of their value are explicitly forbidden and official persons (including PTEFs) may not accept more than one casual gift per year from the same person or institution. Protocol gifts are automatically property of the institution, casual gifts as well, unless they are of a personal character (LDPC, Article 11, paragraphs 4, 7 and 8).

196. All gifts received shall be registered in the register of gifts designed by the KAA and kept by the respective institution (LDPC, Article 12). Recorded information shall include value and name of the donor. Each institution creates its own register and nominates responsible officials who maintain the register. The KAA may decide upon request that official persons (including PTEFs) may accept a gift if there are convincing reasons to believe that it was given for personal purposes and does not and may not influence performance of duties (LDPC, Article 12). The gift registers were originally publicly accessible, but following the 2014 amendment this is no longer the case and the information is only accessible upon request. Access is currently only allowed on the basis of the Law on Access to Public Documents.

197. Public institutions that are obliged to maintain registers of gifts are required to provide the KAA with copies of registries of the previous year, not later than 31 March of the following year. The Agency shall control registers of gifts and in case of any deviation shall request from institutions to take measures for complete application of this law. If the KAA ascertains that the official person breached provisions of this law, but such a breach is not considered a criminal offence, it shall inform the institution where the official person exercises his/her duty and shall request disciplinary measures to be taken against him/her. Institution shall inform the KAA about disciplinary measures taken against the official person in question. In case of suspicions for criminal offence, the KAA shall complete investigations and submit a criminal report to the competent prosecutor's office.

198. In 2017⁷⁶, the KAA received notices from 10 institutions reporting reception of 77 gifts in total which is significantly lower number in comparison with 2016⁷⁷ when 126 gifts were declared and in 2015⁷⁸ even with 192 declared gifts in total.

199. Table of gift declarations during 2015, 2016 and 2017^{79,80,81}:

Institution	2015			2016			2017			2018		
	Protocol gifts	Casual gifts	Total									
Presidency	38	65	103	26	4	30	17	3	20	10	0	10
Assembly	9	1	10	25	0	25	15	1	16	6	0	6
Office of Prime Minister	24	4	28	9	5	14	12	2	14	32	0	32
Ministry of European Integration	0	10	10	4	12	16	-	-	-	3	0	3
Ministry of Agriculture, Forestry and Rural Development	-	-	-	3	0	3	-	-	-	-	-	-
National Council for Cultural Heritage	-	-	-	3	0	3	-	-	-	-	-	-
Kosovo Police	-	-	-	2	0	2	-	-	-	-	-	-
Constitutional Court	-	-	-	4	0	4	-	-	-	3	0	3
State Prosecution	-	-	-	10	0	10	0	1	1	-	-	-
Office of Disciplinary Prosecutor	-	-	-	5	0	5	-	-	-	-	-	-
Office of Auditor General	-	-	-	0	14	14	-	-	-	-	-	-

⁷⁶ KAA 2017 Annual Report, p. 21, available in Albanian only at www.akk-ks.org/

⁷⁷ KAA 2016 Annual Report, p. 19, available at www.akk-ks.org/

⁷⁸ KAA 2015 Annual Report, pp. 21-22, available at www.akk-ks.org/

⁷⁹ KAA 2015 Annual Report, p. 21

⁸⁰ KAA 2016 Annual Report, p. 19

⁸¹ KAA 2017 Annual Report, p. 21

Institution	2015			2016			2017			2018		
	Protocol gifts	Casual gifts	Total	Protocol gifts	Casual gifts	Total	Protocol gifts	Casual gifts	Total	Protocol gifts	Casual gifts	Total
KAA	-	-	-	-	-	-	1	0	1	-	-	-
Ministry of Finance	-	-	-	-	-	-	9	0	9	-	-	-
Ministry of Foreign Affairs	-	-	-	-	-	-	2	0	2	-	-	-
Deposit Insurance Fund	-	-	-	-	-	-	1	0	1	1	0	1
Energy Regulatory Office	0	14	14	-	-	-	8	4	12	-	-	-
Municipality of Graçanica	-	-	-	-	-	-	1	0	1	-	-	-
Ministry of Local Administration Governance	0	1	1	-	-	-	-	-	-	-	-	-
Kosovo Prosecutorial Council	10	0	10	-	-	-	-	-	-	-	-	-
Kosovo Judicial Council	1	4	5	-	-	-	-	-	-	-	-	-
Municipality of Mamusha	9	0	9	-	-	-	-	-	-	-	-	-
Municipality of Partesh	2	0	2	-	-	-	-	-	-	-	-	-
University "Ukshin Hoti" of Prizren	-	-	-	-	-	-	-	-	-	26	0	26
Total	93	99	192	91	35	126	66	11	77	81	0	81

200. As can be seen from the table above, the number of gifts varied among the institutions significantly and not all institutions involving PTEFs are listed. The on-site visit confirmed that some of the institutions have never submitted their registers of gifts. Even though the KAA has contact points among relevant authorities, it seems that much more can be done in this matter.

201. The AT welcomes the new Law on Conflict of Interest which contains many clearer provisions in respect of gifts regulation. However the law is not in line with the Recommendation No. R (2000)10 of the Committee of Ministers to Member States on Codes of Conduct for Public Officials by requiring in practice a proof of an intention to corrupt the official. The AT is concerned with this limitation of scope and highlights that the possibility of influence should be presumed and it should not be necessary to prove intent in order to constitute a breach of the administrative prohibition of giving or receiving gifts as distinct from the more serious criminal offence of bribery. Moreover, many provisions of various laws stipulating the definitions and thresholds for gifts are not in line with each other and therefore confusing and possibly ineffective as a result of such contradictions. The AT also regrets that amendment to the LDCP (Law No. 04/L-228, Article 7) abolished the provision that made the registers of gifts public. **Consequently, the AT recommends (i) to harmonise and amend the rules on gifts in order to avoid any conflicts between laws and to put provisions in line with Council of Europe standards; (ii) to ensure effective supervision over reporting obligations; and (iii) to make the gift registers publicly available in order to promote transparency.**

Misuse of public resources

202. Misappropriation in office, fraud in office as well as unauthorised use of property are criminal offences addressed in the Criminal Code (Articles 425 - 427) in Chapter XXXIV Official Corruption and Criminal Offences against Official Duty.

Misuse of confidential information

203. The Criminal Code (hereafter: CC) contains rules on confidentiality and regulates the misuse and disclosure of confidential information.

204. Article 423 (paragraphs 1 and 2) of the CC stipulates the following: "An official person who misuses official information with the intent to acquire any undue gain or advantage for himself or herself or another person shall be punished by a fine and imprisonment of six (6) months to five (5) years. When the official information relates to any procurement action or public auction, the perpetrator shall be punished by a fine and imprisonment of two (2) to eight

(8) years". According to Article 433, an official who, without authorisation, communicates, sends, or in some other way makes available to another person information which constitutes an official secret or obtain such information with the intent to convey it to an unauthorised person shall be punished by imprisonment of six (6) months to three (3) years.

205. LPCI also includes use of confidential information for personal gains or a profit for his/her close or trusted person in Article 9, paragraph 1.6.

Post-employment restrictions

206. Post-employment restrictions for senior officials (including PTEFs) after termination of public functions are regulated by LPCI in its Article 18, which stipulates that senior official, whose public function is terminated, has no right within two years: to be employed or appointed to managing positions or to be involved in control of public or private enterprises, if his/her duties during the last two years before the termination of public function have been directly connected to monitoring or controlling the business activities of those enterprises; being involved in direct contractual relationship or through relative or trustee with the institution in which s/he has exercised a public function; representing, assisting or advising a natural or legal person in a conflict or in business relationship with the institution regarding the job he has performed; and using privileged or confidential information acquired while in office.

207. The AT welcomes the clarity of rules on post-employment restrictions; however the enforcement seems to be rather uncertain. These provisions are brand new and the KAA is obliged to supervise the compliance without any further training, strategy or experience. Therefore, **it recommends to take appropriate measures to ensure effective supervision and enforcement of post-employment restrictions in respect of all senior officials (including PTEFs) including by creating effective internal system of supervision within the Kosovo Anti-corruption Agency.**

Declaration of assets, income, liabilities and interests

Declaration requirements

208. The Law No. 04/L-050 on Declaration, Origin, and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials as amended (hereafter: LDCP) addresses the obligation of all public officials to declare gifts and obligation of senior public officials to declare their financial and other interests in a form provided by the KAA and according to rules specified in the LDCP.

209. Senior officials are defined by the LDCP in a broad way that includes all PTEFs. Government members, deputy ministers, cabinet members and political advisors are among the approximately 4,500 officials who must file an asset declaration with the KAA.

210. The LDCP requires senior officials to declare information related to their property and revenues such as:

- real estate;
- movable property in value of over EUR 3,000;
- possession of shares in commercial enterprises;
- securities;
- cash, in bank accounts, in deposits and in loans in Euros or any other foreign currencies;
- financial rights and obligations towards natural and legal persons;
- personal income for the year, from the salary or participation in boards, commissions or any other activities resulting in personal income.

211. The above mentioned information is to be submitted also for relatives of the senior officials, meaning their spouses, extra-marital spouses, parents, children with whom he or she lives in a family communion, but not siblings, grandparents, grandchildren, uncles, aunts, nieces, nephews or cohabiting partners. Neither are other persons sharing a household covered. When possessions of such family members are separated from possessions of the senior official, their asset declarations must be submitted on separate form and attached to the asset declaration of public official.

212. The asset declarations cover current interests, however, they do not cover future interests and no registration of past interests is required. The obligation to declare does not include business contracts with state authorities. It appears that a person who buys and sells shares is not required to declare every shareholding held during the year. Consequently a process of disposal of shares immediately prior to making a declaration and repurchasing them afterwards would be a simple means to avoid disclosure.

213. Senior officials are required to submit their asset declaration no later than 30 days after taking up or leaving their office or public function. In addition to this obligation, senior officials are also required to submit annual declarations between March 1 and March 31 each year for the previous year from 1 January to 31 December. Senior officials are required to declare existing property, revenues and obligations for the first time and only changes in their status at any subsequent regular annual declaration. The KAA may also request senior officials to submit *ad hoc* asset declarations (upon request of the KAA) if it deems necessary.

214. Information submitted by senior officials is kept in a register administered by the KAA and published on its website within 60 days after deadline for its submission. Current practice is, that template is signed and submitted manually which generates high number of errors. There is an ongoing endeavour to switch from manual submission into electronic which would improve the standard of declarations. This progress is anticipated during the year 2019.

215. According to Article 437 of the CC it is a crime to fail to report or falsely report property, revenue/income, gifts, other material benefits or financial obligations for any person that has such an obligation prescribed by law. Failure to report is punishable by a fine and imprisonment of up to 3 years while falsification of such reports is punishable by a fine and imprisonment from 6 months to 5 years. When found guilty of any of these offences, the value of non-reported or falsely reported property, income, gifts or other material benefits is to be confiscated.

216. During the on-site visit the AT was informed about the newly drafted LDCP. Many changes are currently being discussed, in particular broadening the scope of the law to other groups of public officials holding occupations financed by the state such as professors or physicians, as well as improving the submission procedure by enabling electronic forms. Discussions are also held in respect of adequate sanctions for breaches of the law. The AT became aware that there is no clear understanding of obligations regarding the asset declarations of external political advisors. It was discussed whether and under which conditions this group of PTEFs falls under the scope of LDCP. Although authorities agreed in the end, that all external political advisors who are appointed fall within the scope of LDCP, the lack of awareness and practical enforcement remains a concern of the AT and the clarification and unification as envisaged in the new law is welcomed as a desirable further step.

217. The AT welcomes Government initiatives to improve the system of asset declaration. However, for the time being it seems that the progress of adopting the law has slowed down. The AT encourages authorities to make the improvement of the asset declarations a matter of priority especially taking into account that the system is currently paper-based and making it available in electronic form would bring more transparency and clarity into process and at the same time allow the KAA to use their resources in more efficient way.

Review mechanisms

218. Every senior official is personally responsible for submission of his or her asset declaration on time and in requested quality. The KAA is responsible for preliminary control of submitted declarations and may request the senior officials to correct inconsistencies within 15 days.

219. The KAA is generally responsible for implementation of the LDCP. Pursuant to article 15 the KAA is obliged to conduct a full control of at least 20% of submitted asset declarations that are selected by a draw. The list of public officials whose asset declarations are to be subject to full control in that particular year is to be published by the KAA on its website 30 days in advance and 15 days after the draw. Such full controls are performed in accordance with a special regulation published by the KAA. The difficulty with the current random selection setup is that some officials may be subject of thorough annual checks more often while others not at all. During the on-site visit the KAA clarified that checks are done for example by controlling various registers (customs, tax administration, cadastre etc.) and confirmed good cooperation among various institutions. A network of approximately 170 contact points for the KAA has also been established.

220. To carry out its function correctly, the KAA is authorised to request data from all natural and legal persons that may serve for verification purposes of information submitted in the asset declarations. Article 16 deals with the verification of the accuracy of the declarations. Banks and other financial institutions are required to provide data to the Agency relating to deposits, accounts and other transactions carried out by persons who are obliged to make declarations. The Agency carries out checks with other agencies such as the Financial Intelligence Unit, customs and tax authorities, the cadastre (which is not entirely reliable) and may request data from all natural and legal persons who are required to comply within 15 days. The Agency claimed that there is a good degree of compliance with their requests although it is not clear what are the Agency's powers to require compliance in case of failure or refusal and how often they are compelled to take enforcement action. If the KAA discovers inconsistencies in the information submitted by senior officials, it may request explanation of such inconsistencies within 15 days.

221. Prior to the 2014 amendment to the LDCP, the KAA acted as an oversight body with authority to sanction breaches of the law (excluding criminal offences that were referred to public prosecution) by fines of EUR 1,000 to EUR 2,500 (failure to submit the asset declarations on time) and EUR 1,500 to EUR 2,500 (failure to submit *ad hoc* asset declaration upon request). However, with the introduction of Article 437 of the CC since January 2013 and repealed administrative sanctions of the LDCP (Article 17) in 2014 the KAA submits only criminal reports to the public prosecution and there are no sanctions other than criminal. Taking into account that the element of intent is required to prove commission of a criminal offence of failure to declare there are in practice no dissuasive sanctions since fines and suspended imprisonment sentences are the common practice.⁸²

222. According to the KAA, in 2017 4,498 senior public officials were obliged to make a regular annual declaration of their properties, out of whom 4,423 (98.3%) did so on time. Out of the remaining 75 officials 48 declared their property after the deadline, while 27 did not make declarations at all. Out of 899 senior public officials who took office in 2017, 792 declared their assets in accordance with the law (88.1%), while all 89 public officials who were requested by the KAA did so in the same year. For 2016 the KAA reported that out of 4,352 senior officials 4,334 submitted their annual asset declaration (99.6%). Additionally, in 2016, all 474 senior officials submitted their asset declarations upon taking office. Moreover, all 237 senior officials submitted their asset declarations upon dismissal from their office (100%), as well as all 156 senior officials submitted their asset declarations on request of the KAA (100%).

223. The table regarding declaration of assets by senior public officials in 2015⁸³, 2016⁸⁴ and 2017⁸⁵ is set out below.

	Years	Submitted	Did not submit	Total	%
Annual declarations	2015	4,143	57	4,200	98.6%
	2016	4,334	18	4,352	99.6%
	2017	4,423	75	4,498	98.3%
Declarations upon taking office	2015	350	0	350	
	2016	474	0	474	
	2017	792	107	899	88.1%
Declarations upon KAA request	2015	97	0	97	
	2016	156	0	156	
	2017	89	0	89	
Declarations upon leaving or	2015	164	0	164	

⁸² In implementing Article 437 of the CC, courts have sentenced 16 officials in 2014, 33 in 2015, 25 in 2016 and 9 in 2017. Suspended sentences represent an average of 55% and 100% in 2017. The rest includes fines and court admonitions whereas imprisonment sentences are insignificant and not dissuasive (Source: Agency of Statistics data).

⁸³ KAA 2015 Annual Report, pp. 18-20, available at www.akk-ks.org/

⁸⁴ KAA 2016 Annual Report, pp. 14-17, available at www.akk-ks.org/

⁸⁵ KAA 2017 Annual Report, pp. 13-16, available in Albanian only at www.akk-ks.org/

	Years	Submitted	Did not submit	Total	%
dismissal from office	2016	237	0	237	
	2017	547	209	756	72.4%
Total	2015	4,754	57	4,811	98.8%
	2016	5,201	18	5,219	99.7%
	2017	5,851	391	6,242	93.7%

224. As far as the full or complete controls are concerned, the KAA reports it conducted a thorough review of 20% of asset declarations selected by drawing lots from the total in 2017 (886). In 563 cases no irregularities were found, while in 340 cases additional explanations were requested. In the end, 127 cases were referred to the KAA Department for Combating Corruption for filing criminal charges and one case to the tax administration. In 2016 the KAA fully reviewed 824 asset declarations, out of which 805 were selected by draw and 19 were initiated ex-officio. In 281 cases inconsistencies were identified, 38 cases were forwarded for filing criminal charges to the KAA Department for Combating Corruption. During the last three years the KAA reports it referred criminal reports to public prosecutions offices and/or police against 189 persons in 2015, 48 in 2016 and 107 in 2017.⁸⁶

225. The table with the results of full control procedures in 2015⁸⁷, 2016⁸⁸ and 2017⁸⁹ is set out below.

	Random selection draw list (20%)	Ex officio	Total	No identified irregularities	Suspected irregularities	Internal investigations/ Referral to other bodies
2015	780	19	799	537	262	43
2016	805	19	824	543	281	38
2017	886	17	903	563	340	128

226. As already mentioned in paragraph 104 above, the KAA's approved budget in 2017 was EUR 505,664 and EUR 480,703.68 after revision, out of which around 75% was used on wages and salaries of the staff.⁹⁰ This means a slight increase in comparison with 2016 when the total revised budget was EUR 446,321.22, out of which around 79% was spent on wages and salaries of the staff⁹¹.

227. The AT regrets the decreased role of the KAA in respect of supervision of asset declaration and highlights the need for proportionate, dissuasive and effective sanctions which should not be only criminal with the high standard required for proof of a criminal offence. Consequently, **it recommends (i) to introduce effective, dissuasive and proportionate sanctions for breaches of LDCA; (ii) to ensure without abandoning the random element that every official is checked from time to time; (iii) to ensure that property subject to an appropriate threshold which is acquired and disposed of since the previous declaration is also disclosed; and (iv) to take appropriate measures to ensure effective supervision and enforcement of the law on asset declarations for all relevant public officials including external political advisors.**

⁸⁶ KAA 2015 Annual Report, p. 5; 2016 Annual Report, p. 6 and 2017 Annual Report, p. 6.

⁸⁷ KAA 2015 Annual Report, pp. 20-21.

⁸⁸ KAA 2016 Annual Report, pp. 17-18.

⁸⁹ KAA 2017 Annual Report, pp. 16-17.

⁹⁰ KAA 2017 Annual Report, pp. 32-33.

⁹¹ KAA 2016 Annual Report, pp. 27-28.

Accountability and enforcement mechanisms

Criminal proceedings and immunities

228. Ministers enjoy functional immunity from prosecution, civil lawsuit and dismissal for actions or decisions that are within the scope of their responsibilities as members of the Government (Article 98 of the Constitution) (For further information, see paragraph 45 above of this report). The President's immunity is set out in Article 89 of the Constitution and Article 8 of the Law on the President.

229. Criminal offences against official duty are stated in the CC and contain the following offences (Articles 422-437): Abusing official position or authority; misusing official information; conflict of interest; misappropriation in office; fraud in office; unauthorised use of property; accepting bribes; giving bribes; giving bribes to foreign public official; trading in influence; issuing unlawful judicial decision; disclosing official secrets; falsifying official document; unlawful collection and disbursement; failure to report or falsely reporting property, revenue/ income, gifts, other material benefits or financial obligations.

230. Statistics are unfortunately not detailed, nevertheless the AT was informed that several proceedings were initiated against the PTEFs, some of them are still ongoing and none of them have so far resulted in conviction. In 2017 there were 2 cases against former minister, 5 cases against deputy ministers, 16 cases against former secretaries general, 5 cases against secretaries general, 2 cases against advisors, 10 cases against advisors to the minister and 9 cases against professional advisors. Out of those 49 cases in 20 cases criminal charges were preferred.

231. In 2017, the KAA referred 109 notices and criminal charges to competent institutions for further proceedings, out of which 89 criminal charges concerning 99 persons were referred to the Chief State Prosecutor, while 20 cases were forwarded to the Directorate for Investigation of Economic Crimes and Corruption within the Kosovo Police.⁹² In 2016, the KAA forwarded 41 notices and criminal charges to competent institutions regarding 48 persons, out of whom 44 persons were forwarded to the Office of the Chief State Prosecutor, and 4 persons to DECCI-Kosovo Police. In 9 cases forwarded to the DECCI-Kosovo Police, the suspect was not identified.⁹³ The highest number of cases were related to the criminal offence of failure of or false disclosure of assets, income, gifts and other material benefits or financial obligations, followed by abuse of official position or authority and only one case was regarding conflict of interest (this remained the same both in 2016 and 2017).

232. The table of referrals in 2015, 2016 and 2017 is set out below.^{94 95 96}

Information referred to	2015	2016	2017
Chief State Prosecutor	114	28	89
Kosovo Police	12	13	20
Total no of referrals	126	41	109

Non-criminal enforcement mechanisms

233. The KAA is the primary authority in charge of non-criminal enforcement mechanisms for breaches by official persons and senior officials (including the PTEFs) of the rules of conflict of interest, restrictions on business activities, assets declarations and gifts. The KAA is entitled to conduct preliminary (administrative) investigations related to the allegations of corruption in the cases when no criminal procedure is initiated by any other mechanism. It can act *ex officio*, upon reports of natural or legal persons or upon request

234. The breaches of the LPCI are considered as misdemeanours, unless they constitute a criminal offence. In such cases the KAA refers the case to court which establishes misdemeanours and imposes sanctions. Sanctions for breaches of rules on conflict of interest

⁹² KAA 2017 Annual Report, p. 6, available in Albanian only at www.akk-ks.org/

⁹³ KAA 2016 Annual Report, p. 6, available at www.akk-ks.org/

⁹⁴ KAA 2016 Annual Report, p. 6, available at www.akk-ks.org/

⁹⁵ KAA 2015 Annual Report, p. 6, available at www.akk-ks.org/

⁹⁶ KAA 2017 Annual Report, p. 25, available in Albanian only at www.akk-ks.org/

may be fines as well as prohibition of exercise of public function from 6 months to up to 2 years when the misdemeanour is committed by senior public officials, managers of leaders of managing institutions (Article 23 of the LPCI). Unfortunately, there are no such provisions regarding the LDCP due to the amendment to LDCP by Law No. 04/L-228⁹⁷ which repealed the previously established sanctions.

235. When public officials do not comply with rules on incompatibility and prohibition of certain activities as prescribed by the LPCI, the KAA shall notify the official of his/her obligation to either stop exercising his/her activity or resign from his/her function. The official's employer is also informed of the case. In case the warning of the KAA is not taken into account by the official, the KAA requests the employer to initiate the proceeding for the official's dismissal.

236. Violations of the LPCI are also to be considered as disciplinary offences (Article 24), regardless of any criminal liability. In order to initiate a disciplinary proceeding, the KAA shall notify the employer of the official.

237. When legal acts have been issued by an institution due to conflict of interest the KAA shall initiate an administrative proceeding in order for them to be revoked or annulled by the institution. Financial and material consequences of such legal acts are also to be settled by the responsible official of the institution (Article 24).

238. Decisions taken by the KAA on conflict of interest cases as well as on breaches of the LPCI are published on the KAA's website.

239. In case a violation of the LPCI and the LDCP constitutes a criminal offence, the KAA shall file a criminal report to the prosecution service.

240. There have been no cases in the last five years where PTEFs have been removed on grounds of corruption or related misconduct. In 2017 one request to initiate a misdemeanour proceeding was submitted by the KAA to a court for a breach of rules on conflict of interest committed by a PTEF.

241. Violations by PTEFs uncovered by courts are not made public. No access to decisions in misdemeanour proceedings is granted.

⁹⁷ Law No. 04/L-228 on Amending and Supplementing the Law No. 04/L-050 on Declaration, Origin and Control of the Property of Senior Public Officials and Declaration, Origin and Control of Gifts for all Official Persons (Official Gazette 28/2014) – see paragraph 93.

5. CORRUPTION PREVENTION IN LAW ENFORCEMENT AGENCIES

242. Within Kosovo, the following law enforcement bodies operate within their own area of competence: the Police, including its Border Department which are under the authority of the Ministry of Internal Affairs and are supervised by the Police Inspectorate, as well as Kosovo Customs and Tax Administration of Kosovo which operate under the authority of the Ministry of Finance. The current report focuses under chapter A on the Police with the Border Department and the Police Inspectorate and under chapter B on Kosovo Customs.

A. Law enforcement authorities – Police authorities

Organisation and accountability of law enforcement – Police authorities

Overview of various law enforcement authorities – Police authorities

243. According to the Law on the Police⁹⁸ (hereafter: LoP), Kosovo Police (hereafter: KP) is a public service within the scope of the Ministry of Internal Affairs. The police is a civil organisation which hierarchically operates through a unified command chain throughout the territory of Kosovo. The police have their uniform, flag and emblem, which are approved by the government on the proposal of the minister. The KP operates under the authority of the Minister of the Internal Affairs and under the control and supervision of the Director General of the Police. The specific powers of the Director General are not defined in the law except those related to the internal organisation of the KP in Article 32.

244. The Border Department is one of the regional departments of the KP and under direct supervision of the Director General. Whereas the Border Department is part of the organisational structure of the KP all rules and regulations for the KP are also applicable to the Border Police (hereafter: BP). In this report the features that are presented for the KP as such apply also to the Border Police and for that reason there will be only reflection on relevant divergences for the BP.

245. The Director General (hereafter: DG) is appointed by the Prime Minister for a period of 5 years with the possibility of renewal. A commission appointed by the Minister of Internal Affairs proposes the candidates to the Minister and s/he proposes the candidate for appointment in a meeting of the Government. Criteria for selection and appointment are laid down in Article 38 LoP.

246. The Minister's authority does not include the operational management of the police. The Director General reports and is directly accountable to the Minister in matters of police administration and management. The Director General cooperates with the Minister and provides him/her with information and reports in the manner prescribed by law.

247. During the on-site visit the AT learned that the Minister and Director General have also regular informal meetings without any agenda and minutes kept. This type of meeting is quite common and may contribute to mutual understanding but it also gives room for suspicion of political influence on the operational level. Since serious concerns have been expressed by the respondents in the latest report on citizens' trust in the KP⁹⁹ who thought that the police is placed at risk by political influence over its operational work, it follows that the independence of the KP should be ensured and freed from any undue influence. In this regard, provisions of the LoP should be fully implemented, and the operative police work should not be subject to any undue influence.

248. In the area of public order and security and according to Article 5, paragraph 2 LoP the Minister has the following rights and duties:

- Develop policies and support the preparation and implementation of legislation;

⁹⁸ Law No. 04/L-076 on Police of 2 March 2012.

⁹⁹ <http://pointpulse.net/>

See also KCSS (2018): Trends of citizens' perceptions towards Kosovo Police (2015-2018), available at www.qkss.org/

- Oversee co-ordination between the police and other public authorities with respect to border crossing control;¹⁰⁰
- Oversee co-operation between police and other agencies, international organisations responsible in the field of public order and security;
- Develop and implement strategies for public relations and relations with other responsible bodies in the field of public order and security;
- Collect, keep and analyse statistical data and information; and
- Perform functions related to preparations for emergency cases as is defined by this law and applicable laws.¹⁰¹

249. The KP has a total of 8,735 employees. 7,665 of them are police officers with police authorisations and 1,070 are civil servants. By gender, 85.98% are male and 14.02% females. According to ethnicity, 84.11% are Albanians, 11.94% are Serbs, 2.23% Bosnians and 1.72 other ethnicities. More than 4,000 police officers are over 40 years of age.

250. The KP is structured at two levels: central and local. The General Directorate of Police is the central level responsible for the entire territory of Kosovo. Next to the Departments of Support Services and of Human Resources the General Directorate of Police has 3 departments with external orientation: Operations, Investigation and Border. Investigation Department is present at central level only, Operations and Border on central as well as local level. Operations Department has over 4,000 employees and Border over 1,300. Operations Department includes on the local level the Regional Directorates of Police. They are responsible for the regions composed of designated municipalities, police stations in each municipality and police substations within certain areas of a municipality. The territorial jurisdiction of each regional directorate and police sub-station is determined by the Director General. The territorial jurisdiction of each police station is within the boundaries of the municipality where it is located. The internal organisational structure of the KP is proposed by the Director General and approved by the Minister.¹⁰² According to Article 32, paragraph 3 of the LoP the Director General may, with the approval of the Minister, establish temporary police units to carry out special duties. Currently no such temporary police units exist. However, a special police unit for Pristina has to be established, based on Article 7 of Law No. 06/L-012 on the Capital City of Kosovo.

251. The Police Border Department is organised at central and local level. Central level consists of two divisions, the Division for Border Control and Surveillance and Division for Integrated Border Management. The second division deals with the coordination and cooperation between all the authorities and agencies involved in the security and control of the border. Under the auspices of the Division for Border Control and Surveillance there are three Regional Directorates of the Border Police to manage the police stations for border surveillance next to the Border Police Station at the International Airport of Pristina "Adem Jashari", which has a special status. The territorial jurisdiction of the Regional Directorates of the Border Police is specified and it differs from the territorial jurisdiction of the Regional Directorates of Police; however, from the hierarchical aspect it falls under the General Directorate of Kosovo Police.

252. The general duties of the KP are basic law-and-order functions that include: protection of life, property and providing safety for all persons; protection of the fundamental rights and freedoms of all citizens; prevention of the risk to citizens and maintaining public order and safety; prevention and detection of criminal acts and their perpetrators; investigation of criminal offences and their perpetrators; supervision and control of traffic safety; management and control of the state border; providing assistance during natural disasters and other emergencies; and performing other duties as assigned by applicable law (Article 10, paragraph 1 LoP).

253. In the exercising of all actions the KP is guided by the following principles: fair and equal treatment of all persons; respect for human rights and fundamental freedoms; neutrality

¹⁰⁰ The Minister of Internal Affairs is the National Coordinator for Integrated Border Management (IBM) and chairperson of the Executive Board for the IBM. See Law No. 04/L-072 on State Border Control and Surveillance and Law No. 04/L-216 on Cooperation between Authorities involved in Integrated Border Management.

¹⁰¹ See Law No. 04/L-230 on the Agency for Emergency Management

¹⁰² Regulation (MIA) No. 02/2017 on the Internal Organisation and Systematisation of Working Positions of Kosovo Police <https://gzk.rks-gov.net/>

and impartiality regarding persons' political views and affiliations; integrity; honesty and accountability in public service; transparency, providing information to the public and being open to public; legitimacy, suitability and proportionality; commitment to employment, advancement and assignment of duties in comprehensive, merit-based and non-discriminatory manner, by reflecting the multi-ethnic character of Kosovo and by recognising the principles of gender equality and human rights foreseen by the Constitution (Article 2 LoP).

254. The above mentioned LoP describes the authorisations that define the general authorisations and limitations of a police officer in performing his/her duties regarding the prevention of danger and maintaining order and public safety. The powers and limitations of the police officer during the exercise of the duties pertaining to criminal investigations are generally defined in other laws, including, but not limited to, the Criminal Procedure Code (Articles 68-99).

255. The mission of the Border Police can be found on the official website of the KP/Border Department and reads as follows: "To guarantee an increased border safety by preventing, revealing and capturing the criminals involved in transnational crime activities, terrorist activities, trafficking with human beings, and forgery of documents, transportation of weapons of mass destruction, narcotics, weapons, stolen vehicles and other smugglings prohibited by law".¹⁰³

256. In order to enhance and ensure the integrity of the KP an agency separated from the police organisation has been established by law, the Police Inspectorate of Kosovo (hereafter: PIK).¹⁰⁴ According to Law No. 03/L-231 on Police Inspectorate of Kosovo (Article 3), the mission of PIK is to ensure an accountable, democratic and transparent police service in accordance with the legislation in force and required standards. Currently the PIK has 81 employees. The scope and role of the PIK will be described and discussed in later paragraphs.

Relations between the Kosovo Police, the Public Prosecutor and the Court

257. The KP enforces orders and instructions legally issued by a public prosecutor or a competent judge. The KP cooperates and reports to the competent public prosecutor's office for information related to alleged criminal activity for which the KP is notified in accordance with applicable law.

Cooperation with central and local institutions of government

258. The KP cooperates with institutions of central government that are responsible in the field of security. Such co-operation is regulated by sub-legal acts of the government and memorandums of understanding approved by the Minister. At the request of central or local government institutions, the KP is authorised to provide assistance to them in the performance of their public duties when there is a reason to believe that the safety of persons performing public duties could be at risk because of possible resistance to their actions.

259. The KP takes part through the BP department in the so called 'Integrated Border Management' (IBM). This is a law-based alliance of cooperation between the KP, the Kosovo Customs and the Food and Veterinary Agency¹⁰⁵. This law regulates the cooperation of the said authorities involved in the integrated border management and in the implementation of the joint strategies of these authorities. The concept of integrated border management is based on 3 pillars including cooperation within the service, between the agencies and at the international level. It is headed by the National Coordinator of IBM and provided for by the National Centre housed in the premises of the Ministry of Internal Affairs. Nine ministries are also involved mainly for the support of the IBM but also for assignments in primary and operational functions in specific cases.

Cooperation with the community, with a view to preventing and combating crime and increasing security for all communities

260. The KP communicates and cooperates with local government authorities, civil organisations and local communities with the aim to prevent criminality and ensure security for

¹⁰³ <http://www.kosovopolice.com/en/department-of-border>

¹⁰⁴ Law No. 03/L-231 on Police Inspectorate of Kosovo of 14 October 2010.

¹⁰⁵ Law No. 04/L-216 on Cooperation between Authorities involved in Integrated Border Management of 31 July 2013.

all communities. The KP cooperates with the community, while the station commander and other KP representatives participate in the Municipal Community Safety Council (hereafter: MCSC), established in each municipality by the Municipal Assembly. The MCSC is an advisory body chaired by the mayor and is composed of representatives of all communities within the municipality and other relevant stakeholders. The purpose of the MCSC is to develop awareness about the nature of crimes, irregularities and violent behaviour in the local community, to identify concerns about public safety and to recommend action plans to address issues of community safety and quality of life in cooperation with municipal authorities, local communities and police. The Director General is authorised to establish a Local Public Safety Committee (hereafter: LPSC) as an advisory body within the geographical area of a police station that is in the best interest of an effective work of community policing. Based on requirements of a particular community or the Police Station Commander more than one LPSC may be established. They are composed of citizens and police officers who work on a voluntary basis for the benefit and in the interest of the community. LPSCs are a regular member in the meetings of the MCSCs.

System of accountability and reporting

261. There are certain rules pertaining to accountability and reporting with respect to the official activity and financial administration (use of public resources, private funding e.g. through sponsoring) of the KP. The hierarchical level is obliged to request and report in regard to decision-making and spending. Persons directly concerned by law enforcements activities from the KP and other members of the public and the media can access information on such activities through the Public Relations Office based on the Law No. 03/L-215 on Access to Official Documents (LAPD).

262. In the National Anti-Corruption Strategy 2018-2022 a clear and critical focus is on the present state of the anti-corruption efforts within the law enforcement agencies. Objectives for the coming period are amongst others: to increase coordination and cooperation between law enforcements institution, in particular those specialised in the field of anti-corruption, improve the legal framework, and to promote corruption reporting and encourage citizens' active participation in the fight against corruption. A lot of measures have been determined such as: review of institutional mechanisms and bodies in the area of anti-corruption in terms of legal infrastructure, cooperation and improvement of inter-institutional communication; facilitating communication between competent institutions to combat corruption; organising media campaigns with the purpose of encouraging citizens to report on negative phenomena such as bribery, misuse of official duty, public property etc.; participation in public debates, media campaigns, lectures and various organisations for citizens and businesses in preventing corruption and other illegal activities. However, the previous National Anti-Corruption Strategy with its Action Plan 2013-2017 is still in force and applicable to the KP. All departments of the KP have made their own concrete plans of action based on the National Anti-Corruption Strategy while the PIK is not part of the national strategy due to the nature of its investigative activities; however, general measures from the KP's action plan are applied. All action plans are classified as confidential because of their operational content and not available to the public nor have been provided to the AT. However, the AT also got an impression that classification is a response of the KP to increased demands of the public for greater transparency in its functioning.

Access to information, confidential information and data protection

263. The media and the general public have access to all financial information subject to the limitations that the law provides for access to official data. For stakeholders who ask for information through a procedure, all relevant information with the official findings becomes official at the earliest time when the circumstances are appropriate. The police cooperation with the media is laid down in the Regulation on Personnel and Administration in the Kosovo Police (Articles 40-53). Not only is the KP obliged to cooperate but the KP also recognises the public's right to information about public order and peace and police activities in law enforcement. When providing information police officers have to comply with provisions and limitations of the applicable legislation. According to the Regulation (Articles 54-64) the KP is also entitled to make use of social media and networks with the aim of informing the public about police work and law enforcements activities and under the same obligation of compliance with rules and procedures that relate to the media and those related to use of information technology.

264. Pursuant to Article 9 of the Police Code of Ethics police officers are obliged to protect and store data and information considered as secrets and other trustable data learned occasionally while on duty and off duty. This will continue after work relation of the police officer is terminated.

265. All applicable legislation is published on the official websites of the Assembly and the Government of Kosovo and also in the Official Gazette¹⁰⁶ while other sub-legal acts are published on the official websites of the respective agencies. As no further information on the topic of 'Access' has been provided it is not possible for the AT to analyse the general replies that are given.

266. The AT found on the KP website very restricted information on the regulations in force, strategic/policy documents and action plans for the fight against corruption, control and enforcement mechanisms and integrity in general. The AT takes the position that as far as possible this information should be easily available to the general public as public accessibility is the cornerstone in terms of transparency and accountability in the fight against corruption. **The AT therefore recommends to ensure ample publication and easy access to all regulatory and relevant documents regulating the Kosovo Police tasks and activities without compromising its operational activities.**

Public trust in law enforcement authorities – Police authorities

267. Various NGOs are regularly conducting surveys on citizens' trust in law enforcement authorities. Such a poll was published in January 2018 by the NGO Kosovo Centre for Security Studies.¹⁰⁷ The trends have shown that the public trust in the KP in 2017 in general has increased by 10% (59 -> 69) in comparison to the levels noted in 2015 and 2016. In various more specific areas, e.g. the selection of candidates and the employment process within the police as well as the concern that the police serves the interests of the Government and of political parties, the risk of political influence on the police is believed to be quite high and the outcome is less positive.

268. Surveys on public trust are conducted twice a year by UNDP¹⁰⁸ and other local stakeholders.

269. In the same report it is shown that regarding the extent of police corruption, there is an increase of corruption in the KP. While around 27% of the respondents perceived that the KP is corrupted in 2015 in 2016 there was a remarkable decrease in citizens' perception regarding this matter (with 11% of them perceiving the KP as corrupt). However, in 2017 there is a noticeable increase when the results are compared with 2016. During 2017 around 28% of the respondents stated that the KP was corrupt, marking an increase of 17% compared to 2016. It is revealed that there is a need for police internal control mechanisms to be strengthened and for the police to be more proactive in preventing police corruption, in order to strengthen institutional integrity of the KP. This would undoubtedly have an influence on the reduction of this negative phenomenon, given the fact of the existing suspicions that some police officers are involved in corruption and bribery.

270. The citizens' trust in the KP may have improved last year, but it is hard to predict whether this improvement will remain in 2018. More specific figures on perception of corruption do not support the proposition that citizens' trust has increased but rather show a negative tendency. An explanation is not available but with the divergent figures the KP cannot be at ease.

271. The AT has the impression that for the regular police officer the rules are complete and clear. However, it is necessary that the senior officers don't show ambiguity in their conduct and present themselves to the public as uncompromising in discerning between 'right and wrong'. Wrong conduct in leadership positions weakens the leadership itself and invites the lower ranks to take the fight against corruption less seriously. The internal supervision should be stronger and permanent and in case of violation of the rules concerning integrity and corruption effective, proportionate and dissuasive sanctions are to be taken. In that way respect, credibility and public trust will be gained.

¹⁰⁶ <https://qzk.rks-gov.net/>

¹⁰⁷ <http://pointpulse.net/>

¹⁰⁸ www.ks.undp.org/

Trade unions and professional organisations

272. The Police trade union was set up in July 2005. It is currently composed of around 5,000 members who represent employees of the KP. The trade union's activities focus inter alia on increasing the membership level, protecting rights of its members, supporting legal initiatives related to medical insurance, law on police, establishing partnership with MIA management on development of social dialogue, enhancing dialogue and cooperation with police management, supporting families of died police officers, organising training and drafting sectoral collective contract. The Police trade union has its own website¹⁰⁹ but it also uses the KP intranet and existing media to inform about its activities. Since 2013, there is an NGO called Association of Women in Kosovo Police¹¹⁰ which is composed of 830 members from all regions and communities (73 of them are male). Its main goals are related to strengthening the role and position of women in the KP, raising awareness and addressing issues affecting women within the KP, promoting and assisting in the implementation of the principles of equality and non-discrimination in the KP, ensuring continuous professional development of all women in the KP, developing and participating in professional and social networks at national, regional and international level.

273. Trade unions play an important role in the protection of the rights of police employees and the improvement of labour conditions. Its own association of police women can help to promote gender equality within the police service by empowering women to develop strategies and activities to overcome the challenges they face. The general trade union and the professional women organisation are not responsible nor accountable for the state of integrity – including control of corruption – within the police organisation but since a great deal of the employees are organised in these institutions, they could in the opinion of the AT have an educational role in this area. It is in the interest of all police officers to take part in a public organisation that represents the best values of integrity. These private institutions taking the interests of its members seriously could promote a corruption-free police organisation by promoting a zero tolerance attitude towards violations of anti-corruption rules and breaches of integrity. In the opinion of the AT it would enhance their position and respect if the goals of these institutions should include this mission and if the activities give evidence of this notion.

Anti-corruption and integrity policy, regulatory and institutional framework

Anti-corruption and integrity policy, mission statements and ethical principles

274. The KP has adopted several guidelines and regulations that regulate the area of anti-corruption policy and integrity. The Police Code of Ethics is the key document in which the main principles for proper behaviour are outlined.¹¹¹ The general provisions in the Code are elaborated in administrative instructions, e.g. on the manner of performing police duties and authorisations¹¹² and the enforcement in case of violations.¹¹³ Also, rules of the human resources policy promote a corruption free organisation¹¹⁴ disciplinary measures and procedures, conflict of interest and strengthening integrity measures within the KP.

275. According to the KP, there is a dedicated and firm policy for the prevention of corruption and promotion of integrity within the organisation. On the basis of risks analysis in the integrity field the KP recently drafted the Plan on Strengthening the Integrity in the Kosovo Police 2018-2019 which was approved by the DG. The Action Plan as such is published on the KP intranet

¹⁰⁹ www.spk-rk.eu

¹¹⁰ www.shqpk-ks.org

¹¹¹ Police Code of Ethics, signed on 12 November 2015 by the Minister of Internal Affairs.

¹¹² Administrative Instruction No. 01/2012 on the Manner of Performing Police Duties and Authorisations, signed in September 2012 by the General Director of the Police.

¹¹³ Administrative Instruction (MIA) No. 05/2017 on Disciplinary Violations, Disciplinary Measures and Procedures in the Kosovo Police, signed on 15 December 2017 by the General Director of the Police.

¹¹⁴ See for instance the following administrative instructions and documents:

- Regulation on Operations in the Kosovo Police, signed on 11 April 2017 by the General Director of Police (Article 62 on conflict of interest);
- Regulation on Personnel and Administration in the Kosovo Police, signed on 3 October 2017 by the General Director of Police;
- Plan on Strengthening Integrity in Kosovo Police 2018-2019 signed on 3 January 2018 by the General Director of Police.

which all police officers can access but inaccessible to the general public. The AT is not convinced about the necessity for such inaccessibility of these documents as it firmly believes in their positive impact on the public's trust in the work of the KP in the area of strengthening integrity within its ranks. Therefore the AT encourages the KP to reconsider what information in the Action Plan should be protected as confidential and to allow access to the rest. In general terms, the KP is determined not to tolerate corruption or other unlawful actions that violate the integrity of the police organisation. The adoption of this Action Plan is an important step for the KP, which will serve as a guide for the work of all KP employees. Its purpose is to contribute to strengthening institutional capacities, reducing potential negative occurrences, which may violate the integrity of the KP, providing support for the enhancement of professionalism of police officers in all activities of the organisation which have been identified as being more vulnerable to unethical and illegal acts. The Plan for Empowering Integrity in the Kosovo Police reiterates the commitment of the police to further increase the existing operational controls in the full spectrum of conducted activities, focusing on providing transparent and efficient services. Since January 2018 reports on the implementation of the Plan are drafted on a quarterly basis by the respective departments. The officer responsible for the implementation submits the compiled results to the DG of the KP. As already pointed out above, making a summary of the progress on implementation of measures envisaged in the Plan available to the public would be beneficial both for transparency of the police endeavours in strengthening integrity within the KP as well as for improving trust of the public in the KP.

276. Having noted the commitment of the KP little information has been provided to the AT on progress and results of prior good intentions and firm declarations for improvement and enhancement. No information was provided on the new Plan with regard to, e.g. the progress of implementation of the National Anti-Corruption Strategy and Action Plan 2013-2017, in so far it refers to law enforcement, nor as to what continuation was given to Peck I Project AC Assessment Report recommendations (2013 and 2014) and other related Peck II Project findings and recommendations. Reporting on what has and has not been achieved should always be taken into account when new plans are drafted and activities planned and should be made transparent. Therefore, the **AT recommends (i) to continue to develop concrete operational mechanisms with clearly defined measures and deadlines for their implementation and the identification of responsible persons in the anti-corruption strategic/policy documents; and (ii) to give structural attention to the progress made on ongoing intentions and plans in the field of integrity and the fight against corruption.**

277. The Border Police is a part of the organisational structure of the KP. As said, all regulations that are applicable to the KP are likewise applicable to the officers working in the BP department. In addition to that the BP has formulated its own mission statement with specific goals and objectives. In the area of anti-corruption and integrity Goal 2 includes 5 objectives:

1. Objective 1: Eliminate to the maximum the occurrence of corruption in order to minimise its negative social and economic impact in Kosovo.
2. Objective 2: Raise the integrity of officials by strengthening managerial accountability and enhance efficiency and effectiveness by guaranteeing public trust and confidence in the Border Police and the Ministry of Internal Affairs.
3. Objective 3: To create continuous monthly, quarterly or annual education of critical subjects such as integrity, corruption, bribery, human rights etc.
4. Objective 4: Ensure that there is a system that will immediately identify border workers who commit unlawful actions such as corruption and other harmful actions for the organisation.
5. Objective 5: Promote "ZERO TOLERANCE" policy for any criminal offence involving an employee, in particular corruption.

278. Given the goal to enhance and ensure the integrity of the KP (including the BP), the Police Inspectorate of Kosovo (hereafter: PIK) has been established by law as an agency separated from the police organisation.¹¹⁵ According to Article 1 of the Law No. 03/L-231 on Police Inspectorate of Kosovo the scope of the PIK activity is:

¹¹⁵ Law No. 03/L-231 on Police Inspectorate of Kosovo of 14 October 2010.

- prevention, detection, documentation and investigation of the criminal offences committed by Kosovo Police employees, regardless of rank and position while on duty or off duty;
- inspection of the structures and functions of Kosovo Police to ensure accountability, effectiveness and efficiency in the implementation of applicable laws, sub-legal acts and standard operational procedures that are in force;
- investigation and/or inspection of high profile disciplinary incidents, involving KP employees, as defined in Article 4, paragraph 1, and sub-paragraph 1.11 of this law;
- investigation of all alleged disciplinary offences of police officers having the highest rank of the senior police management level and senior appointed police positions;
- when there is a based suspicion that the Director General of Police has committed disciplinary violation, the Prime Minister may authorise the PIK to conduct the disciplinary investigations. Upon completion of disciplinary investigation the PIK shall report on findings to the Prime Minister;
- to receive all citizens' complaints, as well as to review and determine where the complaints will be disseminated for investigation, either to the Kosovo Police or PIK.

279. In order to prevent the conflict between public interest and private interest of senior officials in discharge of public functions Law No. 04/L-051 was in force until recently. According to its Article 4, paragraph 1.16, this law was applicable only to the top management of the KP and the PIK: Director General, Deputy Directors and Regional Directors of the KP as well as Chief Inspector of the PIK. The KAA is the central responsible authority for implementation of this law. In the chapter related to conflict of interest, a more detailed description will be given regarding the law on the KAA and the role of the KAA. Since 27th April 2018 the Law No. 06/L-011 on Prevention of Conflict of Interest in Discharge of Public Functions has been in force with a broader scope. More information on the new law is also given in the chapter on Conflicts of Interest.

Code of Ethics

Kosovo Police

280. The Police Code of Ethics (hereafter: the Code) represents the moral and ethical standards of the KP, expresses the will and desire of the police officer for legal, professional, right, competent and human action. The Code came into force after signature of the Minister of Internal Affairs on 12 November 2015. The purpose of the Code is to increase awareness of the police officers of the importance of respecting ethical principles and strengthening the ethical and moral behaviour in practice.

281. Appendix to the Code is a description of values and attributes that identify the mission of the KP and is a notification about the Code of Ethics to be signed by each police officer which is stored in his/her dossier. While performing the official duties each police officer is obliged to behave with competence, to act and treat all persons humanly, respect dignity and personality of each person, as well as basis rights and freedoms, determined by the Constitution, laws, administrative guidelines and regulations of the KP. Signing this notification is a preventive measure against corruption. However, the AT wishes to stress the importance of ensuring its effective implementation in the course of regular police work.

282. The Code also lays down rules and directives in the field of respecting the personality and equality. An important basic principle is laid down in Article 6 ('Opposing to corruption'), which stipulates that "the police officer should be unbiased, polite, professional, determined, immune and reject all types of corruption while s/he has no privileges and does not ask for it for the self and others. With commitment he/she should report bribe and every form of corruption". Furthermore there are rules on the publicity of work, independence, data protection and storage, mutual respect. The Code also contains the objectives of the KP, the relationship with and the respect towards the state prosecution, the judiciary and the attorney. The final chapters deal with the organisational structure of the KP, the work relationship, the rights and obligations of the police officer, the training and the investigations.

283. The assessment of conduct and integrity of the KP officers throughout their career is done by direct supervisors, hierarchical supervisors, Vocational Standards Directorate, Internal Disciplinary Commission, and Complaints Commission as internal control mechanisms. The Code

is binding and enforceable as well as applied in practice. In the last five years there are recorded statistics on violations of the Code by senior officials.

Number	Cases sent to competent bodies	Dismissals	Indictments	Suspensions	Disciplinary measures
2013	8	-	4	4	8
2014	3	-	-	1	11
2015	5	4	-	-	13
2016	7	2	-	3	13
2017	9	-	-	-	7
2018	3	-	2	2	4
Total	35	6	6	10	56

Source: Kosovo Police

Border Police

284. As to the policy for the prevention of corruption and promotion of integrity within the KP, all regulations are valid for the BP and the Plan on Strengthening Integrity in the Kosovo Police 2018–2019 is also applicable to the BP. According to the BP, the entities responsible for overseeing and implementing this policy are: first line supervisors at regional level, central level management, Unit of Inspection and Quality Control while the criminal investigation authority in cases where suspected police officers are involved is the PIK.

285. The Police Code of Ethics is binding and enforceable as well as applied in practice also in respect of the BP. In the last five years there are no recorded statistics of the BP's senior officials having violated the Code. No indication is given of violations by other officials despite the fact that the Code is applicable to all police officers. It is not very plausible to the AT that no violations at all are registered. It seems that the compliance of the Code is not very well monitored by the responsible persons as the number of employees' transfers applied as internal disciplinary measures is far from zero. Proper enforcement of the Code and sufficient record-keeping of its implementation and in particular its violations is an important tool for improving police conduct and gaining citizens' trust.

286. The BP provided the following figures regarding promotion, transfers, regional appointments and disciplinary measures during the last 3 years. It shows that respectively in 2015, 2016 and 2017 there were 9, 22 and 5 promotions; 16, 3 and 6 administrative transfers; 26, 20 and 25 outgoing transfers; 26, 17 and 32 ingoing transfers; 178, 332 and 145 regional appointments as well as 73, 41 and 84 internal disciplinary measures. Internal disciplinary measures are taken in case of non-criminal violations of police duties. The primary goal is not prevention of corruption or promotion of integrity but indirectly these measures could have a positive impact on the latter and therefore might be considered as a positive 'side effect'.

287. As the BP is also part of the law-based authority tasked with 'Integrated Border Management' (IBM) together with the Kosovo Customs and the Food and Veterinary Agency, a special code of ethics is applicable to police officers assigned to the IBM.¹¹⁶ This code applies in addition to three other codes of ethics/conduct that are in force in the three authorities concerned. This means that four different codes apply to officers in the IBM. No provision in the IBM's special code of ethics regulates measures to be taken in cases of disciplinary or criminal violations or provides for the competent authority to start investigation. Confusion and ineffectiveness would occur if all authorities in the IBM sought to enforce their own specific codes rather than a unified code. For the sake of clarity and accessibility, **the AT recommends**

¹¹⁶ On the basis of Law No. 04/L-072 on State Border Control and Law No. 04/L-216 on Cooperation between Authorities Involved on Integrated Border Management.

(i) that a single unified Code of Ethics should apply to all law enforcement officers working in the Integrated Border Management with specific additional provisions if necessary to address more broadly conflicts of interest and political activities, and so as to offer practical guidance through explanatory comments and practical examples on all corruption-related subjects; (ii) to ensure a clear and credible mechanism of supervision and sanctions; and (iii) to develop effective internal mechanisms to promote and raise awareness of integrity related matters for law enforcement officers working in the Integrated Border Management (including confidential counselling and regular training).

Police Inspectorate

288. Code of Ethics for Employees of the PIK¹¹⁷ was adopted in 2016 by the Chief Executive Officer (hereafter: CEO); before the Code of Ethics for Civil Servants was applicable to the PIK. The process of drafting the Code of Ethics has been taken on by a working group established by the CEO which, after the completion of the draft, submitted it for approval to the CEO. The Code of Ethics is distributed to all PIK employees and is published on the PIK official website. In principle, the Code of Ethics is mandatory for all PIK employees and both the PIK management as well as each PIK employee are to comply with it. In the last five years the PIK handled 9 cases of violations of the Code of Ethics and sanctions imposed (decided by the CEO) were verbal reprimands.

Risk management measures for corruption prone areas

Kosovo Police

289. The Kosovo Police Integrity Action Plan 2018-2019 was approved in 2018 by the DG, based on risk analysis in the area of integrity. Basic risk areas pertaining to the KP are focused on: investigations (organised crime, economic, corruption, etc.), public security (operations, road traffic, specialised units, etc.), integrated control and management border, support services (procurement, asset management and budget management stocks) and human resources (recruitment, selection, promotion, dismissal of staff). Prevention of corruption by police officers is an activity specifically mentioned and main responsibilities are entrusted with supervisors. For the purpose of supervision, the DG appoints a responsible person and a reporting group which is composed of one member from each department within the KP. Reports are drafted on quarterly basis by the responsible person.

290. The annual report 2016 from the National Audit Office stated that the KP is failing in the implementation of risk management requirements.¹¹⁸ This non-action reduces the effectiveness of financial management within the budget organisation, resulting in shortcomings in the budget process, as well as in reducing the ability of the management to react to financial challenges emerging during achievement of objectives. By non-implementation of risk management requirements an important instrument is missing for enforcing the integrity within the KP and the combat against internal corruption. This risk management is financial based as are many corruption and integrity related violations of concerned legal provisions. For that reason implementation of the related recommendations of the National Audit Office should get high priority.

Border Police

291. The BP has provided certain statistics regarding measures that have been taken during the last three years with the objective of preventing corruption and promotion of integrity (see paragraph 286 above). As this overview only provides figures in personnel movements without further explanation, the AT is unable to analyse and assess the matter.

Police Inspectorate

292. As to the dedicated policy for the prevention of corruption and promotion of integrity the Police Inspectorate has approved not only the Code of Ethics, but also an own Administrative

¹¹⁷ Code of Ethics for Employees of the Police Inspectorate of Kosovo, adopted on 19 February 2016.

¹¹⁸ www.zka-rks.org/

Pursuant to information of the NAO no more than 26% of the total of recommendations given in 2016 were implemented, www.zka-rks.org

Instruction for the enforcement of the provisions in the Code to its disposal¹¹⁹ next to other legal acts e.g. the former and actual law on prevention of conflict of interest in exercising a public function.¹²⁰ Responsibility for the implementation of this policy lies with all PIK employees in general and in particular with PIK management.

293. Concerning the overview of measures in place for preventing corruption and promoting integrity within PIK there is no staff rotation that is carried out on the basis of corruption prevention or any written documentation of the decision-making process regarding these measures.

294. The PIK has carried out risk assessment through SWOT analysis in the strategic development plan whereas in 2017 the Inspectorate has conducted a risk assessment in general. This risk assessment was carried out by the Division for Planning and Legal Affairs and the Division for Cooperation and Information by requesting data from all Departments in the PIK. The results of this risk assessment were presented to the Chief Executive Officer of PIK who approved this risk analysis and appointed an officer responsible for addressing these risks. However, PIK pointed out that this cannot be considered as an analysis of vulnerable services from corruption and risky situations to corruption.

295. When the investigations result that PIK employee behaviour is a criminal offence, the case will be referred for prosecution to the prosecutor's office (Article 30, PIK Law), cases where suspected PIK officials are treated directly by the competent Prosecutor's Office.

296. The information on the above-mentioned regulatory framework and on the conduct expected of a PIK employee is made available to the public on the website of the Kosovo Assembly and Official Gazette.

297. During the last five years PIK has not had any case of a suspended official because of corruption. There have been cases of (suspected) corruption in which no suspension is applied. According to surveys, PIK can count on citizens' trust. A survey was conducted by Kosovo Centre for Security Studies in 2015.¹²¹

Handling undercover operations and contacts with informants and witnesses

298. Different laws govern the design and implementation of undercover operations. Particularly important is the Code of Criminal Procedure (CCP) that includes a chapter III (Articles 84-100) about the collection of information in case of grounded suspicion that one of the offences listed in article 90 has been committed, is being committed or will soon be committed. The responsible state prosecutor asks in that situation a pre-trial judge for authorisation for the deployment of one of the covert measures as defined in the law. At this stage, it is not necessary that a reasonable suspicion against a certain person is present. These measures are enumerated and include the making of sound or image recordings, simulated purchase of property, simulated corruption, a total of 12 in the law defined measures. So is 'covert' described as 'without the knowledge or consent or at least one of the persons subject to measures'. An order for a measure will take effect no later than 15 days after the adoption thereof and is expired after 60 days. The implementation should be focused and is surrounded with safeguards such as the notification to the subject against whom the measure is directed once that is possible given to purpose for which the measure is issued. The use of material that is obtained unlawfully is prohibited. In the case of a complaint about unlawfulness a court 'Surveillance and Investigation Review Panel' assesses the merits of the complaint. If the complaint is found to be well founded, the Panel may decide that the implementation of the measure is terminated, the resulting material is destroyed and/or those affected be compensated.

¹¹⁹ Administrative Instruction MIA No. 16/2015 on Determination of Violations, Disciplinary Measures and Disciplinary Proceedings towards Employees of PIK (9 September 2015).

¹²⁰ Law No. 04/L-051 on Prevention of Conflict of Interest in Discharge of Public Functions (30 August 2011), Law No. 06/L-011 on Prevention of Conflict of Interest in Discharge of a Public Function (30 March 2018).

¹²¹ KCSS (2015): Assessment of Police Integrity in Kosovo, available at www.qkss.org/

KCSS (2016): Monitoring and Assessing the integrity and internal governance in the Ministry of Kosovo Security Force and the Kosovo Police, available at www.qkss.org/

299. The rules of the CCP are clear and extended. Judicial intervention by authorisation at the start and ongoing supervision by the court safeguards on paper the justified and proper application of covert operations. As no information is provided by KP on the application of this legislation in practice the AT is not in a position to assess the actual situation.

300. Apart from this legislation the Law on Witness Protection that on the Protection of Informants are in force.¹²² Both laws are helping law enforcement presumed they are respected and correctly applied by police officers. The AT got information on training programmes but they were carried out in 2013/2014 and therefore are not very conclusive for what training is programmed for 2018 and later given also the coming new Law on the Protection of Whistleblowers. This new law is far more elaborated and detailed than the present and in due time old law.

301. In the field of informants handling the police enforces the Administrative Instruction on the Management and Handling of Covered Human Resources of Intelligence and the Standard Operation Procedure for the Treatment of Informants.¹²³ The KP stated it has built institutional capacities for treatment of informants but fails in providing more detailed information.

302. As to possible guidelines or general instructions given to PIK officers on how undercover operations are to be carried out and how contacts with third persons such as informants and witnesses are to be handled, the PIK stated that this issue is regulated by the Criminal Procedure Code, the Criminal Code, the Law on Kosovo Police, the Law on Protection of Informants, the Law on Witness Protection and other by-laws, such as administrative instructions and Standard Operating Procedures (the latter are classified documents).

Advice, training and awareness

303. Basic training for investigators of the PIK includes a special module on ethics which is mandatory. This module lasts for 70 hours and from the description of its content appears to be comprehensive. Ethics is undoubtedly an important subject. However, the authorities were not clear on whether any training is provided in relation to other matters listed, such as corruption risk factors and dealing with high risk situations, expected conduct, prevention of corruption and conflict of interest and related matters. Also, description of the module implies it is more academic than problem-oriented and it apparently does not include any practical case studies and role-play. It is unclear to what extent the module is focused on the practical problems of police investigators. While 22 officers of the BP also attended four training programmes dealing with corruption of which each lasts five days no details were provided concerning their content, scope, duration and objectives as well as more recent participation and future plans.

304. PIK investigators may refer to their management if they wish to obtain advice on appropriate conduct. Those in need of guidance may consult also the Code of Ethics for Employees of the PIK, guidelines, regulations and annual reports which are published on the website. Where PIK officials are suspended press releases are issued concerning the matter. Although a website can be a very valuable method of communicating information to the public and can open up opportunities for interactive communication it should at the same time contain comprehensive information, be properly resourced and kept up-to-date.

305. Similarly, the BP officials may consult the BP management as well as the KP website. Furthermore, examples on how some most common issues have been resolved are being shared. The AT encourages the BP to take additional steps in that direction, by developing a single document where most commonly encountered problems and solutions to them are being presented. Attention should also be given to ways for informing the public about the management of corruption risks and conflicts of interest among law enforcement agencies, of applicable ethical principles and rules of conduct and of ongoing reforms in relation to them.

¹²² Law No. 04/L-015 on Witness Protection (29 July 2011) and Law No. 04/L-043 on Protection of Informants (31 August 2011). A new draft Law on the Protection of Whistleblowers that will replace the present Law on Protection of Informants was adopted on 12 June 2018 by the Government and is pending adoption at the Assembly.

¹²³ Confidential paper that was not made available to the AT.

Recruitment, career and conditions of service

Recruitment and appointment

Kosovo Police

306. The KP comprises three categories of police personnel; police officers who take the oath and have the authority to exercise and perform police authorisations and duties; civilian staff responsible for performing non-police duties (supporting and administrative services); cadet police. Employment in the KP is conducted through a public vacancy announcement setting out the criteria to be fulfilled by the candidates. Employment is for a fixed term.

307. Recruitment procedures, both the process of testing as well as administration of procedures related to employment are handled by the Department of Human Resources based on the legal framework implemented by KP. The promotion is based on the respective promotion guidelines, while promotion of police officers is done through internal procedures.

308. The KP is committed to employ and advance its staff in comprehensive, merit-based and non-discriminatory manner, by reflecting the multi-ethnic requirements and by recognising the principles of gender equality and human rights foreseen by the Constitution (Article 2, paragraph 1.7 of the LoP). Based on Article 44, paragraph 2 of the LoP and Article 55, paragraph 1.7 of the LoP work relation for police personnel is regulated by a sub-legal act. On this basis an administrative instruction on labour relations in the KP has been issued where the criteria are defined.¹²⁴

309. Verification of candidates for checking integrity/suitability is done in the case of employment, transfer to a specialised unit and promotion. This is foreseen by another administrative instruction on disciplinary violations, disciplinary measures and procedures.¹²⁵

Police Inspectorate

310. PIK personnel are divided into four categories: investigators, inspectors, support staff and staff employees with fixed term contract. Recruitment procedures and job descriptions are foreseen in two administrative instructions.¹²⁶

311. The organisational structure of the PIK provides for a complement of 120 persons.¹²⁷ PIK has till recently 81 employees out of which 24 occupy leadership positions and 57 are positioned at the implementation level; by gender, 22 employees are females and 59 are men. Currently new recruitment procedures are underway. During the on-site visit the AT inquired about the reasons for very fragmented organisational structure (including 5 departments and 17 divisions) with 24 chiefs out of a total of 81 employees. The AT understood that all the positions were full time jobs and that PIK is satisfied with the structure, also given the recent increase of positions in PIK. However, the AT was not convinced about advantages of a structure with one leading position on an average of less than 2.5 employees. The management of such an organisation is complicated. The AT has concerns about the ambiguity in the hierarchy and commanding lines. Corruption and breaches of integrity thrive in unclear situations. Therefore, the authorities should consider simplifying the PIK's organisational structure with clearer internal hierarchy.

312. The criteria for appointing the Chief Executive Officer (CEO) of PIK are given in Article 3 of the Law on PIK: a person who is a citizen of Kosovo; has a valid university degree in policing, law, security or public administration; has at least (3) three years of experience in a high management position in fields related to police, criminal justice, law, security or public administration; has not been convicted of a criminal offence by final decision; has not been punished for serious discipline violations in the last ten (10) years in state institutions; and does not have a conflict of interest with the position or as determined by law is eligible to be appointed as CEO of PIK. A special selection committee is established by the Minister. This

¹²⁴ Administrative Instruction No. 04/2017 on Labour Relations in Kosovo Police (5 December 2017).

¹²⁵ Administrative Instruction No. 05/2017 on Disciplinary Violations, Disciplinary Measures and Procedures in the Kosovo Police (15 December 2017).

¹²⁶ Administrative Instruction (MIA) No. 01/2017 on procedures relating to the labour and employment for PIK Employees and Administrative Instruction (MIA) No. 15/2015 on Work Relation in Police Inspectorate of Kosovo (9 September 2015).

¹²⁷ The actual filling of vacancies is subject to the consent of the Ministry of Finance.

commission shall upon selection propose 3 candidates to the Minister. The appointment is for a term of five years with the possibility of renewal. In case of renewal in a year of general election the term in office will automatically be extended by 2 years.¹²⁸

313. The CEO is the non-political executive authority of PIK and is the highest administrative, technical and operational authority of PIK.

314. The CEO of PIK is responsible for (i) the overall administering/managing and ensuring the implementation of functions entrusted to PIK; (ii) organising and employing of personnel, adopting administrative instructions and issuing decisions related to the functions of the PIK; and (iii) the effective and efficient management of the resources entrusted to PIK.

315. PIK provides equal employment opportunities for all citizens of Kosovo and welcomes applications from both genders, from all communities in Kosovo.

316. In the recruitment process, the CEO of PIK establishes committees for written test, written test assessment, physical test, vetting and oral interview. Each committee consists of three members. Committees responsible for the oral interview and vetting must be composed of at least a head of department who is their chair.

317. In a recruitment procedure for new employees, a candidate can appeal within 5 days, at all stages of the recruitment process. Appeals are handled by the respective committee, which is established by the CEO and takes decision within 2 working days from the moment of receiving the appeal.

Performance evaluation and promotion to a higher rank

Kosovo Police

318. Performance evaluation is done as following: assessment of achievements in periodic tests at the Kosovo Academy for Public Safety, probation evaluation, annual appraisal and bi-annual evaluation of the probationary phase.

Border Police

319. Same provisions for recruitment and career advancement apply also to the BP.

320. Performance evaluation is done by supervisors. The main criteria of assessment are core values, basic skills, leadership skills, training activities and professional development during the year. A person evaluated is involved in the evaluation process and has a right to appeal to the Appeals Commission within the KP. Evaluations are made on an annual basis or at the end of probation period.

Police Inspectorate

321. Promotion of operations employees shall be made based on selection, merit-based, fair, non-discriminatory and transparent process. Promotion to a leading position is for a fixed term with unlimited re-appointment possibility. PIK provides equal employment opportunities for all operations employees to leading positions, who have at least 3 or 4 years of experience within the organisation. For a candidate within the organisation to be assigned to a leading position, 50% of the performance evaluation represent objective criteria such as experience, training and performance and the rest success achieved at a verbal interview.

322. The CEO appoints a committee to review applications and check whether the criteria are properly demonstrated with evidence attached and if the applicants meet the application criteria. In the review stage, a maximum of 50% of the final rating may be awarded, based on the attached documents and by fulfilling the criteria for promotion.

323. After the review of the applications the committee issues a list of potential candidates based on the achieved ratings.

¹²⁸ Administrative Instruction (MIA) No. 33/2010 on the composition of the commission and selection procedure of the Chief of Police Inspectorate of Kosovo.

Rotation and mobility policy

Kosovo Police

324. Personnel rotation and turnover is foreseen within the KP. However, no statistical information has been provided.

Police Inspectorate

325. Operations employees of the PIK may be temporarily assigned to a specific operational task due to working or special service needs and upon the CEO's decision after evaluation has been made. It is possible to transfer/deploy only to positions that are within the same organisational level. Temporary assignment may be given for a period of up to 6 months or until the completion of the specific operational task.

326. During the temporary assignment, the operations employee's position is retained, together with a salary and other provided benefits. In case of temporary assignment to be carried out outside his/her place of residence, the operations employee shall be reimbursed with transport, food and accommodation costs when required. The operations employee is notified in writing no later than 10 calendar days prior to the execution of the decision on temporary assignment to a special task.

Termination of service and dismissal from office

Police Inspectorate

327. The Administrative Instruction on Labour Relations (see footnote 126) contains a comprehensive and detailed regulation of the selection and termination procedures. Employment can be terminated by unilateral decision in case of resignation, dismissal and non-confirmation of probation. Moreover, it may also be terminated by inability to act and restructuring and cuts of positions.

328. An employee may resign at any time from the PIK, by presenting 30-day prior written notice to the supervisor and to the Head of Human Resources Division. Employees who have resigned voluntarily from the PIK, have the right to re-enter to work without being subjected to the regular procedure of the competition, on condition that no longer than 48 months have passed from the time of their voluntary resignation. Readmission at the PIK can only happen when management estimates that there is a suitable vacancy within the structure and provided that there are no reasons against readmission.

329. An appeal is possible in cases when a decision on termination/dismissal is considered without merit or in case of violation of rules on procedures. Any decision on work relation and working conditions may be appealed against, within 5 working days from the date of taking the decision. A committee shall be established by the CEO of PIK to review appeals and issue a decision within 5 working days. A complaint may be filed with the competent court against the committee's decision to refuse a revision because it is unworthy and unreasonable.

330. In order to determine whether a selected candidate is suitable for admission a verification procedure is prescribed. Data provided during the selection procedure shall be verified, e.g. data provided in an application form, in all application documents as well as any criminal activities, anti-social behaviour or other activities which are inconsistent with the Code of Ethics are checked with regard to each candidate. To perform this verification data from public sources including information from the police and courts, references provided by the candidate, private connections and other data are checked. The verification is done by PIK employees and a report is issued with reasoned and documented advice on admission or not. This report is reviewed by a Verification Committee that is appointed by the PIK CEO. A candidate also has to take a written personal integrity test.

331. The candidate shall be disqualified from the further procedures if s/he has declared false information or presented forged documents, intending to increase its employment opportunities. The candidate may be disqualified in case of negative recommendations, reliable information on discrimination or prejudice with regard to ethnicity, race, gender, etc., or manifest behaviour that contradicts the Code of Ethics.

332. There are no specific procedures or criteria to evaluate integrity of individuals who exercise duties in the appointment, promotion, mobility and dismissal of PIK workers. PIK

management is responsible for assessing behaviour and integrity throughout the career, on an annual basis, which is done through an interactive conversation.

Salaries and benefits

Kosovo Police

333. A gross salary depends on the official rank¹²⁹ and position of an employee within the KP. Additional allowances are applicable for hazard, shift work and assignment to special tasks and requiring special skills. The gross monthly salary of a junior police officer is around EUR 315 while the colonel has a monthly salary which is around 3.5 times higher. The new draft Law No. 06/L-111 on Salaries in the Public Sector foresees better harmonisation and increase of monthly salaries within the KP varying from EUR 310 for the cadet to EUR 1,242 for the colonel (up to EUR 1,864 for the Director General).

Police Inspectorate

334. Average gross monthly salaries of the PIK officers at the beginning of career vary from EUR 624 at the level of inspector/investigator to EUR 1,430 for the Chief Executive Officer.

335. Additional benefits may apply (e.g. risks at work – EUR 180, meals – EUR 3 per day and work experience applicable to all employees of the government system in Kosovo. When employment of a PIK employee ceases benefits are also terminated.¹³⁰ The application of benefits is monitored/verified through the monthly payroll. Remuneration is available to the public.

Conflicts of interest

336. The conflict of interest regime as described above in the report (paragraphs 167-186) applies also to law enforcement officers unless stated otherwise.

337. The new Law No. 06/L-011 on Prevention of Conflict of Interest in Discharge of Public Functions (LPCI) broadens the scope of managing conflict of interest. First, it covers senior officials who include the DG, deputy directors and regional directors of the KP and the Head of Police Inspectorate, heads of departments, directorates or equivalent units as well as heads of audit, finance and public procurement units within the KP and PIK. In this regard, there are specific prohibitions or restrictions for senior officials related to accessory activities (Article 12), incompatibilities and membership in NGOs (Articles 13 and 14), transfer of enterprise governing rights (Article 15) and post-employment restrictions (Article 18). Second, regarding other provisions the new LPCI also applies to all official persons, thus including all KP and PIK officials.

338. Article 16 of the LPCI (which is in the same terms as Article 12 of the previous law except that it will now apply to all officials and not merely those who are senior) requires an official to report to his or her superior or managing body any attempt to influence his or her will. There may be a case for requiring also notification to the KAA in such cases.

339. Article 17 of the LPCI extends the provisions in Article 13 of the earlier law relating to self-declarations of private interests that might be a cause of conflict. The law will now apply to all officials. Besides making the declaration the official must withdraw from the decision-making process. The declaration may also be required by the superior or managing body. Declarations are to be in writing "as a rule" (it is not clear what exceptions are envisaged) and under the new law they will require to be registered.

Kosovo Police

340. Implementation of the LPCI and its supervision are carried out on a hierarchical basis within the KP, while the KAA is the central authority for supervising implementation of the LPCI (Article 20 of the LPCI, see also above paragraphs 176-179 of this report). While the KAA may upon request provide advice to specific senior officials, managers and/or managing institutions,

¹²⁹ According to Article 45 of the LoP, ranks include in an increasing order the following: junior police officer, police officer, senior police officer, sergeant, lieutenant, captain, major, lieutenant-colonel and colonel.

¹³⁰ Administrative Instruction (MIA) No. 23/2013 on Salaries, Supplements and Other Benefits of Employees of the Kosovo Police Inspectorate.

it should also do so for other official persons after the exhaustion of internal remedies in employer institutions and when the involvement of the KAA is deemed necessary.

341. With regard to general rules concerning prevention and resolution of conflicts of interest the KP refers to the 'Guidelines and Regulations' that regulate the area of code of conduct and conflict of interest as mentioned in paragraph 280 and following. Each employee is responsible for respecting the legal acts regulating the prevention of conflict of interest in the exercise of official duties. However, the Police Code of Ethics contains no express provision regulating conflicts of interest.

342. The rules and procedures do not apply with respect to the private interests or activities of others with whom a KP officer has a close association. The declarations of interest are available at KAA.

Border Police

343. The general rules and procedures regarding the prevention and resolution of conflicts of interest are regulated outside the Border Police Department, but also the Border Police have the obligation to comply with these rules. The definitions can be found in the Law No. 06/L-011 on Prevention of Conflict of Interest (LPCI). The mechanisms for preventing conflicts of interest in the KP are: Internal Audit and Inspection Unit. It is a legal obligation of each police officer in case of conflict of interest to notify the supervisor. In case of conflict of interest it is obligatory to withdraw from the assigned activity.

344. With reference to the KP including Border Police Department the rules and procedures in matters of conflicts of interest are not applicable with respect to the private interests or activities of others with whom a BP officer has a close association.

345. The direct supervisor is responsible for reviewing the statements on declarations of interest.

Police Inspectorate

346. The general rules and procedures established in relation to the prevention and resolution of the conflict of interests of PIK employees are regulated by the Code of Ethics for Employees of the PIK, the Administrative Instruction (MIA) No. 16/2015 on Determination of Violations, Disciplinary Measures and Disciplinary Proceedings towards Employees of PIK and other legal acts such as the LPCI.

347. The rules and procedures outlined above also apply to the interests or private activities of other persons associated with PIK workers. Responsible authorities for checking the declarations are Chief Executive Officer, Heads of Departments, Head of Finance, Head of Procurement and Director of Audit Units. PIK has not had any request from the KAA regarding a conflict of interest or sanction in the last five years.

Prohibition or restriction of certain activities

Gifts and hospitality

348. Legislation on gifts applicable to public servants as presented in paragraphs 190 to 201 above is also applicable to all law enforcement officers. As per Law No. 2004/34 on Suppression of Corruption (LSC), the Law No. 04/L-050 on Declaration, Origin, and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials (LDPCP), and the new Law No. 06/L-011 on Prevention of Conflict of Interest in Discharge of a Public Function (LPCI), rules on gifts apply to all official persons as defined in Article 120 of the Criminal Code and therefore apply to all police and customs officers. In addition, the Code of Ethics for Border Officials (Article 12) as well as the Code of Ethics for Employees of the Police Inspectorate of Kosovo (Articles 15 and 16) regulate acceptance and giving of gifts in the BP and the PIK. The Police Code of Ethics has at present no specific provisions on the issue of gifts and the only provision of relevance would appear to be the duty to report bribes which are offered (Article 6).¹³¹ No information is provided on whether such reports have ever been made and if so what outcomes ensued.

¹³¹ While issue of receiving gifts is not addressed in the Code of Ethics it is dealt with in Article 23 of the Regulation on Personnel and Administration as follows:

349. With regard to the PTEFs the AT has issued a recommendation that various rules on gifts should be harmonised and amended in order to avoid any conflicts between laws and to bring provisions in line with Council of Europe standards (see paragraph 201 above). In this regard the AT would point out that the Committee of Ministers of the Council of Europe has recommended that "The public official should not demand or accept gifts, favours, hospitality or any other benefit for himself or his or her family, close relatives and friends, or persons or organisations with whom he or she has or has had business or political relations which may influence or appear to influence the impartiality with which he or she carries out his or her duties or may be or appear to be a reward relating to his or her duties. This does not include conventional hospitality or minor gifts".¹³² In the explanatory memorandum to this recommendation the MGC (Multidisciplinary Group on Corruption) which drafted it explained that in relation to minor gifts each country was to establish the criteria to differentiate between what was acceptable and what fell within the general prohibition rule. In the case of the interaction between the public and police officers (as distinct from public officials generally) it is difficult to avoid the conclusion that in most cases the acceptance of a gift, even of a minor one, could cast doubt on the police officer's impartiality. There is, therefore, a need to impose a stricter standard on police officers than on public servants in general not all of whom have the same degree of interaction with members of the public as police officers do not have the same power to affect interests of members of the public in a very immediate and concrete manner. A question of circumstances in which a certain minor gift given to a police officer might be acceptable could be dealt with in Codes of Conduct. An example of such a provision may be found in the Code of Ethics for Border Officials which is discussed below in relation to acceptance of gifts by customs officials. **The AT recommends that the acceptance of even minor gifts by police officers should be prohibited unless the gift is of a nature which is expressly permitted by the Code of Conduct or has been approved by a senior officer.**

350. The AT was informed that the heads of each unit within the KP are responsible for maintaining the register of gifts. However, it seems that the number of cases where a gift is notified is rather low (see table in paragraph 199). It does not appear that any actions have ever been taken by the KAA under paragraphs 6 (control of registers of gifts in case of any deviation), 7 (informing employer of violation of regulation on gifts) or 8 (investigation when suspicions of criminal offence) of Article 12 LDCP in respect of any police authority. Article 16 of the LPCI requires attempts to influence the senior official to be notified to the manager as well as for the gift to be refused, returned or handed over to the manager. The AT could not obtain any information on the number of such notifications if any that have been made under this law or the corresponding provision in the law which it replaced.

Incompatibilities, outside activities and financial interests

351. Article 29 of the Police Code of Ethics prohibits the Kosovo Police from secondary work except in the case of independent scientific and pedagogical work in the field of publications in the area of security. A further exception permits a secondary job (a) with the written permission of the supervisor, (b) the approval of management (c) provided the job does not coincide with police work and (d) does not reduce the prestige of police. With regard to financial interests, the Police Code of Ethics contains no specific provision. Article 23 gives police officers "as a rule" the same rights as other citizens which presumably includes the right to hold property. The Police Code of Ethics contains no express provision regulating conflicts of interest.

"1. The Police employee cannot request or accept gifts or other favours for himself or for members of the family in relation to the exercise of official duties. An employee must inform his/her supervisor in writing if a gift is offered or given without notice and in specific circumstances.

2. A Police employee may accept a breakfast, lunch or dinner or any other gift with reasonable price or value from any association, sponsored religious organisation, fraternal organisation or other non-profit organisation that is legal.

3. Such meal or gift is offered to the employee as a guest of that organisation or as a sign of consideration for carrying out certain special works in favour of all members of the aforementioned organisation or as a reward for activities devoted to the interests of the citizens of our society.

4. A police employee can accept a collective gift on behalf of all employees, but the gift should be something of a small value such as a pack of candy, cakes or other unintentional items. Acceptance of the collective gift should be approved by the supervisor."

¹³² Council of Europe (2001), Codes of Conduct for public officials, Recommendation Rec(2000)10.

352. As well as its provisions in relation to gifts which have already been discussed, the LPCI has a number of important provisions in relation to incompatibilities, outside activities and financial interests of police officers. The new Law is broader in its scope than the previous law which it replaced. In addition, so far as concerns law enforcement agencies, including both the KP and the KC, many of its provisions apply to all public officials (which term has the meaning given to it by Article 120 of the Kosovo Criminal Code and includes all police and customs officers) although there are some provisions which apply only to the much narrower category of senior officials as was the case with regard to all of the provisions of the previous law.

353. The actions prohibited to officials set out in Article 9 LPCI are both more numerous and more precisely defined in the new Law than in the corresponding provisions of the old law to provide for a wider range of prohibited actions. In particular the new law is concerned to prevent actions intended to confer an unwarranted benefit on third parties, on companies in which the official may have an interest, and in relation to benefits intended to be conferred at a future date.

354. Officials are now required to obtain permission for all work outside the institution, even work which is not inconsistent with their function (Article 10, paragraph 4 of the LPCI). Senior officials are no longer permitted to act as advocates, notaries, private bailiffs, as well as other functions related to law enforcement, nor are they permitted other full-time employment (Article 12, paragraph 1 of the LPCI). Nor may senior officials act on the management bodies of private profit-making companies or on more than one steering body of a publicly-owned company or a public institution unless explicitly authorised. Senior officials in such management positions also have "no right" to contract with or seek assistance from public institutions in which they exercise a function (Article 13 of the LPCI).

355. However, a number of problem areas remain. The law still permits an official to gain profit on the basis of copyright, patent or other similar rights (Article 10, paragraph 3 of the LPCI). As discussed below, this appears to give a lawful right to make a personal profit by making decisions which directly benefit the officer concerned, such as a decision to use a device in which one has a financial interest in the ownership of the patent or to use a document in which one owns the copyright. A possible example could be a police officer prescribing a textbook where s/he owns the copyright for use in a training course when the police officer is at the same time involved in training. **The AT recommends that a public official should be required to disclose any intellectual property rights and should be precluded from decision-making in relation to any decision to make a public use of the thing which is the subject of that right.**

356. Article 15 of the LPCI continues to permit a senior official to own shares in a private enterprise but ownership rights are to be exercised by a trustee who is not to be subject to directions, instructions or influence but who may be required to keep the senior official informed. This right to be kept informed could facilitate the senior official to play an active role, even covertly. Where a senior official retains ownership rights the enterprise has no right to establish contracts with or gain assistance from central or local institutions where the senior official holds a decision-making post (Article 13 LPCI). A breach can result in the cancellation of a contract and the return of any financial assistance given. If these were the only consequences of such a breach it could allow a free shot at a corrupt arrangement where the worst that could happen to those who get caught is a return to the status quo. Under the new law, however, the enforcement powers of the Agency are considerably strengthened and it may be more likely that such a breach would lead to administrative procedures. It remains to be seen whether any such cases will occur and if so whether any penalties imposed will be sufficiently dissuasive. It is difficult to see how these rather complex arrangements might work in practice and further safeguards may need to be considered such as a register of all such trustee arrangements and a duty of disclosure to any public body having dealings with the enterprise concerned. There may also be a case for extending these provisions to all official persons and not merely senior officials. It is not altogether clear why these provisions apply only to senior officials or indeed how the law now stands in relation to the participation of more junior officials in a private enterprise which has business relationships with the public sector. It may be that this is not seen as presenting any problem in practice and this indeed may be the case. **The AT recommends that the Government of Kosovo keep under review the effectiveness of the provisions of the LPCI concerning conflicts of interest by senior officials in cases where they have a proprietary interest in a company with a view to amending the law should that become necessary.**

Misuse of public resources

357. Misuse of public resources, i.e. government property, services, personnel, or anything of value belonging to the government that has come into the official's custody or possession by virtue of the official's office or employment constitutes an offence of abuse of official position or authority as per Article 422 (paragraph 2.4) of the Criminal Code.

358. The Police Code of Ethics does not refer to misuse of public resources. In this respect the Kosovo Police point out that their Code of Ethics is in harmony with the European Police Code of Ethics. The Code of Ethics for Employees of the PIK prohibits misuse of financial means and public equipment (Article 4).

Third party contacts, misuse of confidential information

359. No special provisions regarding third party contacts exist (i.e. in the Police Code of Ethics). Only impartiality principles as prescribed in Article 26 that imposes obligation to reject political influence exists. However, the KP state that with regard to the misuse of confidential information this issue is regulated by the respective law, namely Law No. 03/L-178 on the Classification of Information and Security Clearances and by Administrative Instruction No. 01/2012 on the Manner of Performing Police Duties and Authorisations, Administrative Instruction No. 04/2012 on Standards and Methods to Collect, Store, Use and Delete Personal Data Stored by the Police, and Administrative Instruction (MIA) No. 05/2017 on Disciplinary Violations, Disciplinary Measures and Procedures in the Kosovo Police.

360. Article 9 of the Police Code of Ethics obliges police officers "to protect and store data and information considered as secrets and other trustable data learned occasionally while on duty or off duty". This duty does not cease after the police officer leaves office.

361. Disclosing official secrets is an offence under Article 433 of the Criminal Code.

362. The Kosovo Police authorities informed the AT that there are also two internal regulations in place within the police which are of relevance regarding communication to the media and social media. These are Regulation No. 04/2015 on Police Cooperation with the Media and Regulation No. 31/2015 on Social Media. As the KP considers both these regulations to be confidential they were not provided to the AT which consequently is unable to form any view about their suitability or effectiveness.

Post-employment restrictions

363. Other than the continuing duty to maintain confidentiality referred to above there appears to be nothing relevant on post-employment restrictions in the Police Code of Ethics. Regarding restrictions on activities after the termination of public office the scope of prohibited activities has been considerably extended by Article 18 of the LPCI. The previous law was confined to a prohibition for one year of employment in a managing or controlling position in a public or private enterprise if the police officer's duties during the previous two years were directly connected to monitoring or controlling the business activities of the enterprise. It should be noted that the provisions of the law in relation to post-employment restrictions relate only to senior officials.

364. Under the LPCI the following changes have been made: the period of prohibition on employment is now two years, the ban applies to subordinate institutions having a business relationship to the formerly-supervised body, and the ban extends to audit functions. Contractual relationships with the former employer whether direct or through a relative (widely defined in the law) or a trustee are prohibited for two years. Advising persons in conflict with or in a business relationship with the former employer is prohibited during a two-year period. The use of privileged or confidential information obtained during public function for a two-year period for private interest or that of a relative or trustee is prohibited. The former employer is prohibited from doing business with him or her or a body in which he or she has a share of 5% or more for a period of one year. Any breach of these rules has to be notified to the KAA.

365. During the on-site visit it became clear that the major changes brought about by the new Law on Conflicts of Interest do not appear to be as well-known and understood by police management as they should. The AT was surprised to learn that the police do not have an implementation plan yet nor a plan for training in respect of the new law. This may be partly attributed to the speed with which the legislation was enacted, although the AT was informed

that there had been a good deal of public debate about the law. In any event ensuring that all police officers have the necessary information and training concerning the new law will represent an important challenge for police management in the immediate future. **The AT recommends that regular training programmes and awareness raising measures for police in the area of conflicts of interest, gifts, incompatibilities, restrictions on post-employment activities and whistleblower protection be prioritised and intensified.**

Examples and statistics

366. The only information supplied of relevance to police is that in the last five years 6 PIK employees, all men, have been engaged in teaching and training. A question arises whether the absence of any statistical information about links with private business reflects the absence of such contacts or the weakness of controls. There is no information about the number or value of gifts reported. There is no specific information about the activity of the KAA in relation to the enforcement of the Law No. 06/L-011 on Prevention of Conflicts of Interest (LPCI) so far as concerns the police and it seems that to date the KAA's approach has been that the subject is one for police management in the first instance with the KAA's role being to intervene only when absolutely necessary.

Declaration of assets, income, liabilities and interests

Disclosure requirements

367. The law concerning declaration and disclosure of assets, income, liabilities and interests is presented in paragraphs 208 to 227 of this report. The provisions in Chapter II LDCP relating to the declaration of property, revenues, material benefits and financial obligations are applicable to senior officials, defined in the same manner as in the LPCI, and their relatives. Relevant provisions apply to the Director General, deputy directors and regional directors of the KP as well as the Head of the PIK, heads of departments, directorates or equivalent units as well as heads of audit, finance and public procurement units within the KP and PIK.

Review mechanisms

368. General statistics relating to asset declarations are provided in paragraphs 222-225. However, the AT was not provided with any statistical information concerning asset declarations by the police.

Supervision and enforcement

Internal oversight and control

369. Enforcement of the rules on conduct, rules on conflicts of interest and related prohibitions and restrictions is ensured in the first instance by internal mechanisms and is also subject to control by external mechanisms.

370. Declaration of assets regime is enforced by the KAA which is presented in more detail above under the section on declaration of assets (see paragraphs 208-227 and 367-368).

371. For certain issues relating to gifts and prevention of conflict of interest the immediate superior officers in each law enforcement agency have certain enforcement functions. In relation to conflicts of interest, gifts and incompatibilities the powers of hierarchical superior officers within the different branches of the public service, including the law enforcement agencies, have been considerably enhanced by the new LPCI. This is discussed above in the relevant sections of the report. In addition, external supervision over the register of gifts, the register of assets and issues relating to conflicts of interest has been entrusted to the KAA.

Kosovo Police and Border Police

372. With regard to the KP and the BP the internal enforcement mechanisms (in addition to the police management structures) are the Quality Control Unit, as well as the Inspection Unit (for the BP), the Internal Audit and Directorate of Professional Standards acting within the KP, the Internal Disciplinary Committee and the Appeals Committee.

373. The police hierarchical management structures have been described above under the heading of "Organisation and accountability of law enforcement structures".

374. The Directorate of Professional Standards (DPS) is responsible for the enforcement of discipline and the maintenance of disciplinary standards including the investigation of disciplinary offences. It is structured within the Office of the Deputy Director General for Operations and has 55 police officers deployed in 9 units across the police regions and 3 civilian staff. The 58 staff comprises 42 men and 16 women, including the entire hierarchy from the Director to the Investigator. Its staffing structure goes from Colonel down to Sergeant. Staff recruitment is done through internal police contests and successful candidates are required to have a clean disciplinary past.

375. The DPS is competent to investigate all disciplinary cases for serious and minor violations for all ranks except the very highest which are under the exclusive competence of the PIK. Disciplinary matters can be initiated in three ways; following internal initiation by the supervisor, as a result of citizen complaint, and ex officio. The DPS is also competent to conduct investigations of the past conduct of candidates for employment in the police as well as for promotion.

376. The Internal Disciplinary Committee (hereafter: the IDC) is structured within the Office of the Deputy Director General for Resources. It is composed of a chairperson, deputy chairperson and 40 members having a four-year term. There are also three civilian support staff. The IDC is competent for reviewing and imposing disciplinary measures for cases that have been investigated by the DPS, as well as for reviewing and imposing disciplinary measures on locally investigated cases for which disciplinary measures are prohibited in payment. The IDC examines cases in closed and open sessions. In the open session all cases for which disciplinary measures are recommended to be categorised as aggravated are heard, while for all others a closed session is held. Sessions are conducted by panels of 3 or five 5 members. A panel of 5 members is composed only in cases when disciplinary measures that are recommended relate to demotion or interruption of the employment relationship.

377. The review of disciplinary decisions is the responsibility of the Complaints Committee (CC) which is structured within the Office of the Director General and consists of a Chairperson, Deputy Chairperson and 40 members having a 4-year term. There are also 3 civilian support staff. The CC is competent to review the first and second instance courses. In the first instance are those dealing with administrative decisions and in the second instance those relating to disciplinary cases for which a complaint has been filed by the parties to the proceedings. Parties to the proceedings are the accused and the DPS.

Police Inspectorate

378. So far as concerns the PIK the primary internal implementing mechanism is the management of the PIK through various disciplinary committees in accordance with the PIK's legal regulation (Administrative Instruction (MIA) No. 16/2015 on Determination of Violations, Disciplinary Measures and Disciplinary Proceedings towards Employees of PIK). External supervision is conducted by the Minister of Internal Affairs, the Parliamentary Committee for Internal Affairs, the Kosovo Security Force and the KOI.

External oversight and control

Kosovo Police and Border Police

379. External oversight is the responsibility of the PIK. The PIK carries out examinations of complaints against individual police officers. It does not carry out routine performance inspections of individual police officers which are the responsibility of police management. In addition, the PIK carries out examinations of particular units or components within the police, for example, of the traffic police, or of particular police stations as well as examining systems used by the police. The intention is that every unit should be examined about once every three years. Extraordinary inspections may also be carried out where there is a particular cause for concern.

380. Where the PIK carries out an examination of an individual complaint it is the practice to interview the complainant and all relevant witnesses. However, where there is reason to suspect the commission of a criminal offence the case is transferred to the Prosecutor's Office for investigation. In such a case covert measures may be applied only with judicial consent following an application by the prosecutor.

381. When dealing with allegations of improper conduct it used to be possible to engage in the practice known as integrity testing. For example, an officer suspected of soliciting a bribe

might be approached by an undercover agent to see if a bribe would be solicited in a comparable case. The practice has obvious risks and could be open to abuse. It has now been stopped by court rulings. It had not been provided for in the Criminal Procedure Code. The Police Inspectorate indicated their preference to see the process authorised by law subject to the safeguard that there is a reasonable suspicion of unlawful conduct by the officer concerned. Therefore, **the AT recommends that if the practice of integrity testing of police officers suspected of corruption is to be resumed it should be subject to suitable safeguards such as being authorised by a judicial decision following an application by the prosecutor based on the existence of a reasonable suspicion and the absence of other effective means to investigate the matter.**

382. The PIK is composed of about one-fifth former police officers (at present 17 out of 81 staff). This is a difficult balance to get right. Former police may be, or be perceived to be, unduly sympathetic to former colleagues. On the other hand, they will possess invaluable knowledge and experience and there is clearly a place for some officers with such experience in the PIK.

383. In addition, the Parliamentary Security Committee and the KOI have oversight functions. The courts may also exercise important oversight functions where issues of police behaviour arise in the course of criminal trials.

Police Inspectorate

384. External supervision of PIK activities is conducted by the Minister of Internal Affairs, the Parliamentary Committee for Internal Affairs, the Kosovo Security Force and the KOI.

Supervision by the Ombudsperson Institution

385. A recent case has thrown the oversight function of the KOI into sharp focus. The case, which concerned the arrest and forcible removal of six Turkish citizens from the territory of Kosovo, also throws light on the ability of the KP to maintain its operational independence and to resist political pressure to act otherwise than in accordance with the rule of law. Among the key findings of the KOI's report are the following:

"81. The Ombudsperson observes that in the present case the competent authorities undertook actions of forcible removal of foreigners, subject of this Report, without the coordination between institutions on the basis of their entrusted mandates as well as lack of transparency, which is the main principle of good governance in one country.

82. From the information obtained so far it is obvious that the persons removed forcibly from the territory of the Republic of Kosovo were handed over to the Turkish police authorities, who immediately arrested them and charged with committing of criminal offence of terrorism.

87. Thus the foreigners which were removed are deprived of the rights to be heard and tried by competent public authority. This right safeguarded by the Constitution of the Republic of Kosovo, Universal Declaration on Human Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms and its Additional Protocols, Covenant on Civil and Political Rights, as well as with the ECHR (European Court of Human Rights). All these international instruments are part of constitutional and legal system of the Republic of Kosovo and have priority over provisions of laws and other acts of public institutions in the case of conflict.

88. On the day when the arrest occurred, Kosovo Police, as responsible body mandated for deprivation of people from liberty, was not in the position or plainly didn't want to provide concrete information on the location of persons deprived of liberty, for which media, written and electronic, were reporting on their apprehension. Moreover, such information was denied to the Ombudsperson whose mandate is protection of fundamental rights and freedoms, especially of arrested persons as they are considered as vulnerable category, being completely under the control of the authorities and the freedom of movement is fully banned while in arrest.

89. Additionally, on the day of the arrest, fundamental rights guaranteed by the Constitution of the Republic of Kosovo, the Law on Police, and all international standards for the protection of the rights of the arrested persons were completely denied to the

expelled persons. These rights are: the right to have an attorney, the right to have a doctor, as well as the right to notify the family or the person on their desire about the fact that they are deprived of their liberty. These rights are considered fundamental guarantees against ill-treatment.

90. European Committee for the Prevention of Torture as well, in standards set, considers these fundamental rights as the main guarantee versus physical ill-treatment of arrested persons.

91. Complete denial of these rights places the arrested person at risk to be ill-treated or physical abused. On the day of the arrest, neither attorneys nor the family members of the arrested were informed on the location of the arrested persons.

92. Decisions for forced removal from the territory of the Republic of Kosovo and the revocation of residence permits were not delivered to forcibly removed persons and their defence counsels. The Ombudsperson, as in other cases, reiterates that the denial of the right to exercise legal remedies is a serious violation of human rights guaranteed by the Constitution of the Republic of Kosovo, Laws at force and all international standards on protection of human rights and fundamental freedoms.

114. Therefore, the Ombudsperson estimates that authorities of the Republic of Kosovo by forcibly removing them have exposed them to a real risk to be tortured, physically ill-treated and real risk of serious violations of other rights guaranteed by international instruments for the protection of human rights.

115. As a result, in the present case the Ombudsperson finds that the competent authorities have violated the following: Article 29 paragraph 2, 3 and 4 of the Constitution of Republic of Kosovo [Right to Liberty and Security], Article 31 [Right to Fair and Impartial Trial], Article 32 [Right to Legal Remedies] Article 14, paragraph 1, Article 15, Article 16 paragraph 1 and 2, Article 17, paragraph 2 and 6 Law No. 04/L-213 on International Legal Cooperation in Criminal Matters Article 8 and 10 of the Universal Declaration on Human Rights Article 9, paragraph 1 and 2, Article 13 of the International Convent on Civil and Political Rights Article 2 and 3 of the European Convention on Human Rights and Fundamental Freedoms Article 1 paragraph 1 of the Protocol No. 7 of the European Convention on Human Rights and Fundamental Freedoms Article 3 paragraph 1 and paragraph 2 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.”

386. It is very much to be welcomed that the KOI has had both the necessary independence and the courage to issue a report which is so highly critical of the authorities. The mere existence of such a report is a standing rebuke to those who set the rights of six Turkish citizens at naught, but it is no more than that. The KOI's powers are only to issue recommendations. Apart from the abuse of the rights of the six Turkish citizens who now find themselves without hope of legal redress the KOI's report has identified serious failure on the part of the KP to cooperate with the KOI both on the day the Turkish citizens were arrested and while compiling the report. While the KOI has identified the institutions responsible for these abuses, including the KP, the question of individual responsibility has not been addressed. The head of the Kosovo Intelligence Agency was forced to resign after these events but was replaced in that office by the person who was Head of the KP at the time the violations took place. No attempt has been made to ascertain whether the KP acted on foot of any political direction and if so from where this direction came although there are at the very least strong grounds to suspect that this was the case. If any steps have been taken to ensure that such acts as took place could not be repeated the AT has not been made aware of them. In these circumstances it is impossible to conclude that there are procedures in place which are robust enough to ensure that political influence on the police at the highest level cannot be exercised in the future and that such an incident could not happen again.

387. In 2017 the KOI received 1,863 complaints of which 871 cases were investigated. In addition, 60 cases were opened *ex officio*. A total of 133 recommendations were made of which 46 were implemented, 35 were not implemented and 52 are pending. Only one recommendation was addressed to KP which is still pending. So far as concerns the effectiveness of the KOI the principal obstacle to greater public use of the right of complaint would appear to be the fact that the KOI cannot give a binding decision but can only issue a recommendation. Where recommendations are issued as the figures above show they are often ignored. The KOI

attempts to use media to obtain publicity with a view to exerting moral pressure and the strategy for the future is to publish a blacklist.

388. The KOI has a specific mandate to exercise supervision over police and security forces. In particular the KOI exercises supervision in relation to torture since it acts as Kosovo's national mechanism for the prevention of torture and has power to enter places where persons are detained without prior notification including prisons, police stations and hospitals. In 2016 7 such visits were carried out, in 2017 there were 8, and so far in 2018 there have been 7 which would appear to indicate an increase in this activity. However, there has been one serious case where the KP obstructed the KOI from exercising these powers being the Turkish case discussed above. In 2017 the KOI received 86 complaints against the KP of which 37 were investigated.

389. Article 25 of the Law No. 05/L-019 on the KOI provides for a duty of cooperation by state authorities with the KOI. All authorities are obliged to respond to the KOI on his requests on conducting investigations, as well as provide adequate support according to his/her request. Refusal to cooperate with the KOI by a civil officer, a functionary or public authority may be a reason for the KOI to require from the competent body the initiation of administrative proceedings, including disciplinary measures, which may include dismissal from work or from the civil service. In case the institution refuses to cooperate or interferes in the investigation process, the KOI shall have the right to require from the competent prosecution office to initiate the legal procedure for obstruction of performance of official duty. The KOI appears for understandable reasons reluctant to initiate procedures which may appear to be repressive. However, the KOI's role is merely to make a complaint concerning lack of cooperation leaving the decision how to deal with the case in the hands of the relevant administrative or prosecution authority.

390. According to Article 28 of the Law on the KOI authorities to which the KOI has addressed a recommendation, request or proposal for undertaking concrete actions, including disciplinary measures, must respond within thirty (30) days. The answer should contain written reasoning regarding actions undertaken about the issue in question. It does not appear that this provision is operated in practice.

391. There is clearly a need to strengthen the powers of the KOI in practice. **The AT recommends that (i) the Ombudsperson Institution should be more willing to initiate complaints to the appropriate authorities in cases of obstruction or non-compliance; (ii) furthermore, where the Ombudsperson Institution issues a report which makes a recommendation, in addition to the existing obligation on the addressee of the recommendation to make a written report within a reasonable timeframe, the addressee should be obliged either to implement that recommendation within a specified period or to make a written report explaining why the recommendation should not be followed which should be required to be referred to and debated in the Assembly; and (iii) the Ombudsperson Institution should receive any necessary additional resources to enable and to ensure the effective exercise of these enhanced powers.**

Reporting misconduct or crime, whistleblower protection

392. PIK staff are obliged to report any suspected corruption-related misconduct or breach of duty or of the Code of ethics by fellow staff members as stipulated in the Code of Ethics for Employees of the PIK, Administrative Instruction (MIA) No. 16/2015 for Determination of Violations, Disciplinary Measures and Disciplinary Proceedings towards Employees of PIK and the Criminal Code. Such reports should generally be made to the direct superior or to the competent prosecutor's office.

393. The PIK reports that in the past five years 11 persons have been disciplined for the breach of ethics involving a failure to report suspicions of corruption or breach of discipline, which have led to verbal and written warnings and in one case to suspension.

394. The KP (including the BP) are sensitive to difficulties which can arise in reporting cases to direct superior when that superior officer is also suspected of involvement in wrongdoing. Flexibility of the system is sufficient to deal with such cases and examples were presented to the AT.

395. With regard to the investigation of crime committed by police officers or by other persons holding sensitive positions in relation to law enforcement (for example, judges or

prosecutors) the KP were emphatic that effective procedures are in place to deal with such cases. In cases where police officers need to be investigated the cases are referred to the PIK. The AT was referred to a number of cases where senior police officers or judges – including in one case the president of a court of appeal – were under investigation or were prosecuted. In relation to prosecutors, however, it proved difficult to obtain information about the outcome of the disciplinary complaints against them and it appears that there is a lack of transparency about the disciplinary proceedings involving prosecutors.

396. Questions have been raised concerning the effectiveness of the existing law on protection of whistleblowers (Law No. 04/L-043 on Protection of Informants). On the positive side, Kosovo should be commended for being one of the first countries in the Balkans to introduce specific whistleblower legislation. While the intentions may have been good, however, the content of the law has been widely criticised as ineffective. Not a single case has proven the law as effective in protecting a whistleblower and in several cases the law notoriously failed to do so.¹³³ The National Anti-Corruption Strategy 2018-2022 is highly critical of the current whistleblower protection regime which is described as virtually non-existent. The European Commission 2016 Report on Kosovo stated that the law is not in line with international standards.¹³⁴ A number of independent reports have also been highly critical.¹³⁵

397. Worth and Dyrnishi acknowledge that the law is broadly written, covering the public and private sectors, allowing a wide range of lawful actions to be reported on and ostensibly granting protection from retaliation in the workplace, but identify a number of weaknesses including the vagueness as to how reports should be made, what to do where the whistleblower's superior is involved in the wrongdoing, the actual mechanisms to protect from retaliation, the failure to designate a public institution to receive reports of misconduct outside the workplace, the necessity for whistleblowers to seek remedies in court, the absence of penalties for failure to comply with the law, and the failure to use a culturally appropriate term in the Albanian language to define whistleblowers – the term used is equivalent to the English expression "informant" which has a pejorative connotation in Albanian language. In addition to these deficiencies, the FOL report also refers to the lack of a clear definition of what constitutes an unlawful act and failure to define clearly the persons to whom the law applies, as well as the failure to define clear processes or to provide adequate protective measures.

398. In addition, it might be added that the law fails to protect the whistleblower's anonymity at the initial stages. According to the law a whistleblower is not to be subjected to punitive or disciplinary measures or dismissal or suspension from work or exposed to any other form of discrimination and the court is entitled to reinstate a dismissed whistleblower and award compensation. It is not clear from the legislation how this is intended to work in practice. A remedy which can be applied only after years of litigation is not an effective remedy. The legislation does not provide for any dedicated person who is to hear the report from the whistleblower. The whistleblower is required to report to any employer or supervisor. The person receiving the report has a duty to protect the whistleblower's anonymity and integrity, from mistreatment. To impose this duty on every employer and supervisor in the country is just as effective as to impose it on nobody.

399. Following the on-site visit the AT was presented with a new draft Law on Protection of Whistleblowers which has been later adopted by the Government on 12 June 2018. Although a comprehensive evaluation of the text is impossible it is clear that the draft law addresses a number of issues which were seen as weaknesses in the current law in force. In particular it is noted that the word "sinjalizues" is used in the Albanian text to refer to whistleblowers. It is understood that this word means persons who send a signal and is the same as that used in the legislation in Albania. This change addresses a major criticism of the existing law. The draft law does not appear to require good faith on the part of a whistleblower provided the information is true. While the European Court of Human Rights has upheld legislation making good faith a precondition as being reasonable it is unclear whether the jurisprudence requires that this should necessarily be the case. It is certainly not uncommon for a whistleblower to act in bad faith but nonetheless provide true information. Provided that this does not become a reason to

¹³³ Notably the cases of Thaçi and Mehmeti referred to in both the independent reports cited in this paragraph.

¹³⁴ EC Country Report 2016, {COM(2016)715 final} p. 18

¹³⁵ An analysis of the Law on the Protection of Informants in Kosovo, Lëvizja FOL, 2017; Worth & Dyrnishi Protecting Whistleblowers in Southeast Europe, Regional Anti-Corruption Initiative, 2017.

invalidate the draft law once adopted the absence of a good faith provision may make the law more effective.

400. The draft provides for the KAA to act as a competent authority for the purpose of external whistleblowing in the public sector and for the appropriate regulator to perform a similar role in relation to the private sector. In looking at the way in which a whistleblower may be penalised for blowing the whistle the term “detrimental act” is given a wide meaning. Arguably, however, the remedies in the case of detrimental acts which are less serious than dismissal do not live up to this intention. The draft law provides for a wide definition of employment and for a presumption that disclosure is made in the public interest, both of which are welcome. It is doubtful, however, whether the remedies which a court may order are adequate and in particular compensation after the event may be a much less effective remedy than the power to prohibit an employer from carrying out a detrimental act. A number of duties are imposed on employers that are not always accompanied by provisions imposing penalties on them for non-compliance. There are some curiosities in the law – for example, why should direct resource by a whistleblower to the employer need to be justified. Finally, while the proposed changes in the law appear to be a step in the right direction, not all open questions have been sufficiently addressed. Therefore, due to importance of the matter regulated it is necessary to assess after a sufficient period whether the new law works in practice. In light of the above and subject to further analysis on the basis of additional updated information and developments, **the AT recommends (i) to adopt adequate whistleblower protection measures to be also applicable to Kosovo Police, including the Border Police; (ii) to ensure necessary implementation of whistleblower protection measures; and (iii) to integrate modules on whistleblower protection into existing and future training programmes.**

Remedy procedures for the general public

401. Citizens can file complaints with the PIK personally or through a representative, by telephone (including free telephone lines), electronically or by post, and may make anonymous complaints. Complaints triggering suspicion of a disciplinary violation are handled within the PIK while complaints triggering suspicion of a criminal offence are referred to the prosecutor's office. The PIK has engaged in public campaigns to give information about the complaints procedure. With regard to the Kosovo Police (including the Border Police) complaints can be addressed to the PIK, the state prosecution or the ombudsman as appropriate.

402. In order to prevent corruption, the procedures for handling citizens' complaints against police actions made to the PIK are handled in the same way as those reported to the police. All police personnel are obliged to receive complaints of citizens regardless of where they are filed and have to send them to the PIK within five days for review and registration. The PIK assesses whether they are related to criminal offences and if so they are referred to the competent prosecutor's office. If they are categorised as within their competence for disciplinary investigation they are dealt with by the PIK.

Enforcement and sanctions

Disciplinary procedure

403. Sanctions are provided for in the Administrative Instruction (MIA) No. 16/2015 on Determination of Violations, Disciplinary Measures and Disciplinary Proceedings towards Employees of PIK for violations of the rules of conduct, rules on conflict of interest, as well as related prohibitions, restrictions and declaration requirements laid down in laws and the Code of Ethics of the PIK. The sanctions for breach of the LPCI include fines as well as restrictions on holding office for up to two years. The sanctions laid down in the Administrative Instruction include, in relation to minor disciplinary matters, oral and written warnings and short period salary reductions while for serious infringements sanctions include termination of employment, reduction in rank or transfer in position. Additional measures may include medical or psychological counselling, prohibition to drive PIK vehicles up to one year, administrative transfer and mandatory training.

404. Disciplinary violations are reviewed and investigated either by a direct supervisor (in case of a minor disciplinary violation) or by Disciplinary Investigation Team and Disciplinary Commission (for serious disciplinary violations). The Disciplinary Investigation Team and Disciplinary Commission are established by the CEO.

405. Decisions taken in disciplinary proceedings are recorded and stored by the Division of Human Resources within three working days from the date of issue. Against decisions an appeal is possible to the CEO (in cases of minor disciplinary violations) or to the Appeals Committee within the PIK (in cases of major disciplinary violations) which is established on ad hoc basis by the CEO.

406. For statistics, see paragraphs 286 and 412 (the BP) as well as 288 and 409-411 (the PIK). There are no statistics on disciplinary proceedings and disciplinary measures within the KP (paragraph 283).

Criminal proceedings against police officers

407. The Criminal Code of Kosovo contains a number of criminal offences which may be committed by official persons. An official person is defined by Article 120 of the Criminal Code as 1) a person elected or appointed to a state body; 2) an authorised person in a state body, business organisation or other legal person, who by law or by other provision issued in accordance with the law, exercises public authority; or, 3) a person who exercises specific official duties, based on authorisation provided for by law. This definition covers every member of the KP. The offences in question include passive bribery as per Article 428 which stipulates that "an official person who requests or receives, directly or indirectly, any undue gift or advantage, for himself, herself or for another person, or who accepts an offer or promise of such gift or advantage, so that the official person acts or refrains from acting in accordance (or in violation) of his or her official duties" commits an offence. Article 429 prescribes an offence of active bribery. Article 431 prescribes an offence of trading in influence which covers exerting an improper influence over police decision-making. Article 433 provides for criminalisation of disclosing official secrets which covers the communication, sending or in some other way making available to another person without authorisation information which constitutes an official secret. Article 422 criminalises misuse of resources by a public official.

408. The offences of active and passive bribery under the Criminal Code are applicable to payments or gifts offered or made to a police officer for a corrupt purpose. No information was provided to the AT on whether any such offences have ever been investigated or prosecuted or if so whether any convictions have ever been recorded and what penalties were applied in such cases.

409. The table presents known or proven instances of corruption or related misconduct by law enforcement officers (police officers and border officers) in the last five years and of sanctions issued.

Criminal investigations against police officers for:	2013	2014	2015	2016	2017
Abusing official position or authority	35	48	39	39	32
Falsifying official document	2	12	4	-	2
Accepting bribes	9	10	11	13	6
Giving bribes	-	2	1	-	-
Trading in influence	-	4	1	-	3
Disclosing official secrets	1	4	2	2	2
Misappropriation in office	2	1	2	1	-
Fraud in office	-	1	2	-	-
Conflict of interest	-	1	-	-	-
Total	49	83	62	55	45

Source: Kosovo Police Inspectorate annual reports between 2013 and 2017

410. 148 KP officials have been investigated in the years 2013-2017. Investigation involving 107 officials ended while 38 officials are yet subject to ongoing investigations and disciplinary

proceedings. For the 110 officials whose investigations were concluded, in 77 instances they resulted in the disciplinary measure of dismissal, 27 were unfounded and 6 cases were discontinued due to death, retirement or dismissal of the officer concerned.

411. The PIK have not had any cases of their officials being suspected of corruption. As far as disciplinary violations are concerned, there have been 11 cases, all of them minor.

412. The BP cases are handled by the PIK. In the last five years 35 cases of corruption were sent to competent bodies. It is not clear how many of these cases were referred to the prosecution authorities and how many of them led to prosecution and for which offences and how many led only to disciplinary proceedings.

413. In order to inform the public on sanctions and measures taken in corruption-related cases, the PIK issues press releases giving brief details of circumstances and suspicions and the administrative measures taken. In the case of the Border Police only statistical information is made public while more detailed data can be sought through the Law No. 2003/12 on Access to Official Documents.

Immunities or other procedural privileges

414. PIK and the Kosovo Police (including the Border Police) do not benefit from any immunity or other procedural privileges.

B. Law enforcement authorities – Customs

Organisation and accountability of Kosovo Customs

Overview of Kosovo Customs

415. Customs Service of UNMIK which was established in August 1999 became Kosovo Customs (hereafter: KC) on 12 December 2008 following the adoption of the Customs and Excise Code of Kosovo¹³⁶ on 10 November 2008.

416. KC has a broad mission defined by the legal obligations stemming from the Code and its Operational Strategy Framework. Thus, the KC's mission¹³⁷ can be summarised in two main categories, although the Government of Kosovo has the authority to assign new tasks to Customs: (i) contribution to strengthening the Kosovo economy through collection of import taxes (customs duties, value added tax, excise and other taxes), control of the import and export regime, protection of registered trademarks, execution of supervision of customs procedures with economic impact and accurate statistics on foreign trade (import and export); and (ii) contribution to security through prevention of and fight against border crime, including drug trafficking, smuggling of weapons and explosive substances and other prohibited goods as well as evasion in revenue. KC collects about 65% of revenues to the Kosovo Consolidated Budget.

417. KC is headed by the Director General who is appointed by the Prime Minister upon proposal of the Minister of Finance and recommendation of the selection committee as established by the Minister. The Director General reports to the Minister and the Government has the power to dismiss, suspend or reappoint the Director General (hereafter: DG).

418. KC is composed of seven (7) customs directorates that correspond to 7 regions (Pristina, Podujeva, Ferizaj, Prizren, Mitrovica, Peja and Gjilan), 22 branches and 49 units.

419. Subordinate structures to the Director General include Internal Auditing Office (IAO), Strategic Planning and Innovation Office (SPIO), the DG's cabinet office which consists of Department of International Relations and Integrity (DIRI), Legal Department (LD), Sector for Advise and Procedures (SAP), Sector for Decisions Review (SDR), Sector for Representations (SR), Sector for Professional Standards (SPS), Sector for General Quality Management (SGQM), Sector for Public Relations (SPR) and Sector for Supporting the Director General (SSDG).

420. Overall and besides DG's direct subordinate structures, Kosovo Customs is composed of 4 units as prescribed by Administrative Instruction No. 39/2017. Besides the Excise and Procedures Directorate and Joint Services Directorate that are of minor significance for the scope of this report, the 2 following directorates are important:

- Operational and Border Directorate (OBD) which consists of the following departments: the Supportive OBD Department (SOBDD), regional OBD departments established in 7 departments that have one or more Customs Border Crossing Point offices (BCP) and one or more Internal Customs Offices (ICO), the Supportive Operational and Border Department (SOBDD) that includes Sector for Admissions (SA), Sector for Integrated Border Management (SIBM), Sector for National Centre of Border Management (SNCBM), Joint Unit for Intelligence and Risk Analysis (JUIRA).
- Law Enforcement Directorate (LED) which includes the Operational and Investigative Department (OID) being composed of the following sectors: Sector for Post-Import Control (SPIC), Sector for Anti-Smuggling (SAS), Sector for Investigations (SIN), Sector for Intellectual Property Rights (SIPR), Sector for Risk and Monitoring (SRM), Sector for Intelligence (SIL), Sector for Customs Offences (SCO).

421. KC is composed of around 583 customs officers (506 wearing uniform and 77 being civil servants).

¹³⁶ Customs and Excise Code of Kosovo No. 03/L-109 of 10 November 2008 (OG 43/2008), amended and supplemented by Law No. 04/L-099 (OG 14/2012), Law No. 04/L-115 (OG 25/2012) and Law No. 04/L-273 (OG 32/2014).

¹³⁷ <https://dogana.rks-gov.net/>

422. One of the competences of the Director General is to nominate directors of the KC upon recommendation of an established selection committee as a result of an internal recruitment process. All customs officers are not civil servants in the Kosovo civil service but they are employed by the KC pursuant to the provisions of the Customs and Excise Code (hereafter: Code).

423. The DG is entrusted to issue rules for administering the KC and provide all customs officers with clear terms of reference. S/he determines through an administrative instruction limits of their competences and duties. S/he may delegate his/her powers to any named person and shall record any action taken in this respect.

424. KC is the sole institution that has the authority to perform customs functions and any other matter assigned to the KC by the Government.

425. Regarding the official financial activity, the KC is accountable to the Ministry of Finance. The KC in no way applies sponsorship from private financing.

426. The KC claims to be a streamlined organisation that is responsible for financial covering over 50% of the annual State Budget. For 2018 the total state revenues are set at EUR 1,829 billion. The AT is aware that this report is not dealing with the efficiency of the KC's operations and the significance of their results. The AT took nevertheless notion of a recent study which was published in March 2017 by a member of the World Bank Group, the International Finance Corporation.¹³⁸ It is a so-called Time Release Study (TRS), a tool and method for measuring the performance of the KC and other border agencies related to trade facilitation at the border. TRS measures relevant aspects of the effectiveness of operational procedures that are carried out by the KC and other regulatory actors in the standard processing of imports, exports and in transit movements.

427. The analysis of the data collected during the TRS shows that there are no major bottlenecks or impediments that affect the release time for transactions. However, there is room for improvements to be made and a number of recommendations are offered for consideration. One of them is relevant for the scope of this report and concerns the necessity to ensure a uniform application of policy and procedures by reviewing the procedures at the inland terminals as there are in part significant discrepancies amongst the terminals in the time taken for various procedures. The AT refers to the IFC study because discrepancies in procedures are not only inefficient but give also room for improper activities. Procedures should be clear and uniform and the KC should therefore take measures to streamline the procedures whenever it is possible.

Relations between the Customs, the Public Prosecutor and the Court

428. When exercising competences, responsibilities and tasks for investigation and detection of criminal offences against the KC its officials act as judicial police in accordance with the Criminal Procedure Code and in such capacity they are accountable to the competent prosecutor in conducting exclusive investigative actions in their area of competence, collecting evidence, supporting filing of indictment by the prosecutor to the competent court and enforcing orders and instructions legally issued by a public prosecutor or competent judge.

429. During the on-site visit the AT was told that the relations with the Public Prosecutor are very good. Although no special public prosecutor is assigned to maintaining relations with the KC, the contacts with the competent district prosecutor are on regular basis. Relationship with the judiciary is of a more formal nature and always involves a prosecutor.

Cooperation with central and local institutions of government

430. The KC is one of the 3 partners in the Integral Border Management (IBM). The others are the Border Police and the Food and Veterinary Agency (see paragraph 259 above).

431. When required by a customs officer it is the duty of every member of the KP to assist in the enforcement of the law related to customs and any other matter assigned to the KC.

432. Moreover, the KC cooperates with institutions that are responsible in the field of security and the defence of economy, including the KP, Tax Administration, responsible ministries and

¹³⁸ <https://dogana.rks-gov.net/>

The study is part of the list of documents as made available to the AT by the KC.

central administrations, Financial Intelligence Unit whenever it submits cash transaction reports, etc.

Cooperation with the community, with a view to preventing and combating crime and increasing security for all communities

433. A Consultative Council acting as an advisory body is established in 2013 and is composed of Ministry of Finance, Kosovo Customs and Tax Administration and the business community represented by three business associations such as Kosovo Chamber of Commerce, American Chamber of Commerce in Kosovo and Business Alliance of Kosovo. It aims at promoting sustained dialogue with the business community on policy-related matters, common challenges faced and reforms for improvement of business environment, increase of security and prevention and combat of criminal activities.

Access to information, confidential information and data protection

434. The media and the general public have access to all financial information, except for legal limitations provided for with regard to access to official documents. Whereas for stakeholders who ask for information through a procedure, all relevant information with the official findings becomes official at the earliest time when the circumstances are appropriate.

435. The regulatory framework is public for all staff in the Outlook electronic systems, and on the KC website. It appears that majority of internal rules including administrative instructions are not posted on the website and are not publicly available.

436. The documents and applicable legislation in customs area are public. Customs make public corruption cases from suspension to dismissal. In this area, the KAA or relevant institutions may also incorporate information provided by competent agencies on cases and occurrences.

Public trust in Kosovo Customs

437. According to confidence surveys conducted by the UNDP, the perception of the prevalence of large-scale corruption in the KC was 45.2% in October 2016. It decreased to 22.7% in October 2017 and increased to 39.1% in June 2018¹³⁹.

Trade unions and professional organisations

438. There is a trade union with the KC since 2009. Its representatives are supposedly to have access to procedures, including disciplinary procedures.

Anti-corruption and integrity policy, regulatory and institutional framework

Anti-corruption and integrity policy, mission statements and ethical principles

439. Anti-corruption and integrity policies are included in the framework of the Customs Strategic Plan 2016-2018.¹⁴⁰ Moreover, the KC took an active part in the elaboration of Kosovo Anti-Corruption Strategy and its Action Plan 2018-2022.

440. The KC dedicates itself to promotion of integrity and highest professional standards for KC officials by the improvement of mechanisms and means to prevent, investigate and detect corruption cases. In this respect, goal 6 of the Strategic Plan 2016-2018 is focused on improved customs ethics and prevention of corruption and conflict of interest. In this regard, strategic objectives to achieve this goal include *inter alia* improvement of mechanisms and means to prevent, detect and investigate corruption cases. Reduction of chances of corruption and increase of the integrity level is aimed to be achieved through continuous and consistent implementation of anti-corruption measures, joint activities in all management levels as well as performance enhancement of customs service. Moreover, the KC shall further improve the program for integrity development and promotion through a harmonised plan of activities, including educative measures. Emphasis shall be given to periodical control mechanisms to

¹³⁹ For further information, see www.ks.undp.org

¹⁴⁰ <https://dogana.rks-gov.net/>

detect and prevent corruption within the KC and consistent enforcement of disciplinary and other measures.

441. Furthermore, the Strategic Plan foresees the increase of awareness level on corruption consequences and confirmation of zero tolerance approach towards corruption towards citizens, NGOs, media and private sector. This implies creating open and transparent relationship with stakeholders, following-up information in appropriate and short time and offering necessary support to users of customs services about their rights and obligations. Implementation of the Strategic Plan and its Action Plan will be periodically monitored and reported every three months.

442. The Strategic Plan is also dealing with the necessity to prevent and detect conflicts of interest which is discussed in the related section on conflicts of interest (see paragraphs 483-484 below).

443. During the on-site visit the AT discussed with the interlocutors from the KC the efforts of this institution to prevent and fight corruption and was impressed by the all-over strict policy and mechanisms and measures aiming at ensuring effectiveness. The last quarterly report of the 2017 on implementation of the Action Plan showed monitoring and evaluation of the foreseen measures in the field of prevention and detection of conflict of interest, corruption and misuse of official duty in the exercise of customs officer's function. The Action Plan of Kosovo Anti-corruption Strategy 2018-2022 envisages a set of measures that are relevant for customs as well including strengthening of internal controls, building human capacities on ethics, anti-corruption, forensic accounting and fraud investigation, managing in-flow information mechanisms (secure hotline, complaint boxes), inter-agency mechanisms, increasing transparency in law enforcement agencies, raising awareness and encouraging reporting of corruption and other related misconduct. Encouragement is hardly at stake but the AT strongly welcomes the KC to continue the efforts for preventing corruption in the coming Strategic Plan for 2019-2021 preceded by an accountable overview of the successful activities under the actual plan and the goals that are still to be achieved.

Code of ethics

444. Since its establishment in 2001, the KC drafted and adopted the Code of Conduct for Customs Officers No. 71/2009. It determines the matters of legislation, neutrality, professional standards and responsibilities for customs officers; accepting gifts, conflict of interest etc. The Code is an internal regulation that is strictly mandatory and is to be implemented by every staff member. Every new employee signs a declaration agreeing with application of the Code. Violation of the provisions of the Code of Conduct for Customs Officers results in disciplinary consequences and prosecution. The Sector for Professional Standards (SPS) – directly subordinated to the DG – oversees the implementation of the Code and is responsible for conducting disciplinary proceedings at the administrative level. The investigation sector conducts criminal proceedings based on the powers given pursuant to the Code of Conduct for Customs Officers, the Criminal Code (Article 120, paragraph 18) and the Criminal Procedure Code (Article 19, paragraph 1). For all cases investigated under the authority of the Prosecutor's Office, it notifies the SPS after filing a criminal report and a criminal indictment, so that customs officers are treated at the administrative level.

445. The examples listed below show cases dealt with at administrative and criminal level.

Activities	2013	2014	2015	2016	2017
Cases reported to Prosecutor's office	7	10	5	4	4
Cases reported to Police	2	0	2	0	1
Dismissal from work place	1	1	0	4	1
Suspensions	0	17	1	10	3
Cases investigated in SPS	22	42	29	22	19
Disciplinary actions in total	10	61	57	32	35

446. The table shows a strong increase of disciplinary actions in the years 2014-2016 but last year there is a significant decrease in the number of disciplinary actions.¹⁴¹ During the on-site visit KC interlocutors explained to the AT that KC officers are aware of a huge risk of being discovered in case they get involved in situation of misconduct. The level of enforcement is high and permanent, so after 2015 and 2016 the measures taken deter the employees to undertake corruption connected activities.

447. The AT is positive on the results achieved so far and supports the KC to proceed with this approach. When in the coming years the deterrence is keeping alive with unchanged effort, it may be expected that the mind of all employees of the KC in the end will bear a high and self-evident notion of integrity and proper conduct.

Risk management measures for corruption areas

448. Risk analysis is based on statistics received from the Quality Management Sector, data from the Intelligence Sector, investigations, etc. as well as based on cases and number of cases, type of violations etc. According to statistics of criminal and disciplinary cases, regional directorates are more exposed to risk; therefore more rotation is applied at this level. Risk management is done through field inspections and continuous controls on staff and systems. Effectiveness is assessed on the basis of field control results. The AT found the efforts of the KC to combat corruption impressive and consistent. In the border cross points 18% of the goods and 50% of the documents are checked. Selection is done on the basis of origin, type of goods, value, fiscal policy and background of the transportation company and executed by risk analysis officers under the supervision of the risk management. Integrity tests are not part of the control system but may be applied in case of suspicion of misconduct and after authorisation of the competent judge.

Handling undercover operations and contacts with informants and witnesses

449. Except for one case there is no practice with whistleblowing. Two years ago there was an internal whistleblower who complained about his superior officer. Investigation was done but no hard evidence was found. There was neither criminal indictment nor an administrative sanction but the concerned officer was transferred to another region.

450. The AT is surprised that whistleblowing is hardly put into action at all whereas in corruption prone area as border crossing and customs many seductions are on hand. A wrong perception of loyalty but also uncertainty about effective protection of the whistleblower are important issues in preventing fellow officers to report on suspicious conduct. The present Law No. 04/L-043 on Protection of Informants guarantees the whistleblower anonymity and that is a necessary provision, although the AT is conscious of the risks of anonymous information as it could be driven by improper motives. Of course, solid protection is necessary but most important is the right notion of loyalty. Every employee should be aware of the fact that in matters of corruption and integrity related to a fellow officer loyalty to the organisation - and not to the individual colleague - is the standard for action. The AT learned that in the KC there is a mechanism in place to encourage whistleblowing by customs officers, including the IMB Centre's channel.

451. A more extended new draft Law on Protection of Whistleblowers is adopted by the Government on 12 June 2018.¹⁴² The new Law gives more in detail specific rules, *inter alia*, to ensure rights and protection of whistleblowers, a description of the various types of whistleblowing, the procedure of whistleblowing and possible judicial proceedings in case of detrimental acts.

Advice, training and awareness

452. In addition to participation in training provided by national and international partners, the KC has started developing a training module for its staff on "Anti-corruption measures, Code of Ethics and Conduct, Conflicts of Interest, Implementation of Procedures and Standards". The

¹⁴¹ The nature of violation of 19 cases investigated in 2017: suspicion of misconduct (2), negligence on duty (10), bribery (1), unprofessional conduct (3), loss of customs property (2) and non-declaration of property (1).

¹⁴² Draft Law No. 06/L-085 on the Protection of Whistleblowers which was adopted on 12 June 2018 by the Government and endorsed at the first reading by the Assembly on 23 July 2018.

content of the training module includes "Prevention of Corruption and Conflict of Interest" and "Ethics and Code of Conduct for Customs Officers". The modules are in Albanian and Serbian. They mainly include lectures by lecturers, interactive sessions and group work. The specialised training lasts two days and takes place four or five times a year. Training is mandatory.

453. During the period between 2013 to 2017 more than 100 customs officials have attended training activities on issues encompassing ethics and anti-corruption, basic and advanced anti-corruption training, code of ethics, prevention of conflict of interest, implementation of procedures and standards and elaboration of the new anti-corruption strategy. These activities were organised by different relevant stakeholders such as KIPA, OSCE, KJI, American Embassy, Kosovo Customs and UNDP.

454. Regarding the various rules and procedures to be followed to carry out their mission law enforcement officials can initially receive advice from the professional customs sectors such as the sector on advice and legislation, other professional sectors such as the Sector for Professional Standards, the Department of Human Resources, supervisory line, etc. Outside the institution, advice can be obtained from the KAA, various ministries affiliated with certain issues, the judicial council, the prosecutorial council, the personal data protection agency, etc. Such advice is required according to the needs and complexity of cases and usually when there are changes in legislation.

Recruitment, career and conditions of service

Recruitment and appointment

455. The structure of employees in the KC consists of uniformed public service officers and customs officers as well as civil servants (auxiliary staff) whose work relationship is regulated by the Civil Service Law and bylaws for its implementation.

456. Pursuant to Article 6 of the Customs and Excise Code and Chapter IV of Administrative Instruction No. 37/2016 on Regulating Customs Officers Labour Relations, customs levels are classified into functional levels/ranks. The structure of employees includes 6 levels L1/CO1 (customs officer) to L6/CO6 (director of directorate). At the basic level is the Customs cadet with MO rank and on the top is the Director General with CO7 rank.¹⁴³

457. In the structure of employees in the KC, there is no political denominator. All officials of this institution are contracted for an indefinite period of time for uniformed public servants, with the exception of the Director General who has a mandate for three years with possibility of continuation.

458. Recruitment procedures are developed in accordance with the provisions of the Customs and Excise Code No. 03/L-109 and Administrative Instruction No. 37/2016 on Regulating Customs Officers Labour Relations and in conformity with the provisions of the Law on Civil Service No. 03/L-149, Regulation No. 02/2010 on Recruitment Procedures in Civil Service and Regulation No. 21/2012 on Civil Servants Career Promotion. The responsible authority/entity for staff recruitment is the DG through the public competition procedures while the administration of the recruitment procedures is done by the Human Resources Sector.

459. For the period 2014-2017, the KC has not conducted any external recruitment procedure for customs officers. In 2017, an internal process was carried out for advancement to the rank of senior customs officer with the rank CO2 which included 114 candidates. Ninety-eight (98) successful customs officers were therefore advanced to the position of senior customs officer with the rank CO2 (71 male and 27 female). In the same period 9 civil servants were recruited from outside.

460. Pursuant to Article 4, paragraph 1.7 of the Administrative Instruction No. 37/2016 on Regulating Customs Officers Labour Relations, recruitment, selection, admission, promotion and assignment to duty within the KC is performed only through approved, open and competitive procedures, based on objective work-related criteria (merit principle). As for civil servants, this principle is defined in the Law on Civil Service No. 03/L-149.

¹⁴³ L2/CO2 - senior customs officer, L3/CO3 - team leader/head of unit/customs expert, L4/CO4-head of sector/station/division, L5/CO5- head of department.

461. The selection criteria of the customs officers in the recruitment process are in accordance with the provisions of Law no. 03/L-212 of Labour and Article 11 of Administrative Instruction No. 37/2016 on Regulating Customs Officers Labour Relations which provide equal opportunities for both sexes (women and men) in the recruitment process.

462. Referring to the legal acts in force and to the current practice, it has not happened that the DG refuses the candidates proposed by the selection committees without any due justification and explanation of reasons. Moreover, candidates have the right to legal remedies at all stages of recruitment.

463. According to Article 25 of Administrative Instruction No. 37/2016 on Regulating Customs Officers Labour Relations a verification process is performed to determine whether the candidate selected by rank is eligible to be admitted to customs. Verification is carried out about data presented in the application form, relevant documentation submitted during the application, the data implicating the candidate in criminal activities, anti-social behaviour or other activities that are contrary to the Code of Conduct for Customs Officers or applicable legislation.

464. Staff integrity is assessed in order to check disciplinary or criminal records. The committee responsible for the appointment, promotion, mobility or dismissal of customs officer is established in accordance with the following administrative instructions:

- Administrative Instruction No. 37/2016 on Regulating Customs Officers Labour Relations (Article 16 on selection committee);
- Administrative Instruction No. 16/2015 on Disciplinary Procedure (Article 12 on disciplinary committee); and
- Administrative Instruction No. 18/2015 on Appeals Procedures (Article 7 on appeals committee).

465. According to the aforementioned provisions of these acts it is required that the relevant committees be composed of qualified, professional and credible officials with high integrity who are not subject to incompatibilities of functions, conflict of interest with the parties in respective procedures nor prior disciplinary measures. Staff integrity is assessed by their superiors who are responsible to report any potential violations. Likewise, the SPS takes into account potential complaints of parties.

466. Integrity testing of system and officials is done through *ad hoc* inspection controls.

Performance evaluation and promotion to a higher rank

467. Performance appraisal of all customs officers is a very important work management tool to assess employees, review training needs and plan adequate development of customs and their officers including their promotion. Before 2016, performance appraisal was applied on a bi-annual basis while as of 2017 it is applied on an annual basis¹⁴⁴. In the event of any suspicion or prior information, performance appraisal for candidates in law enforcement sectors is reviewed.

468. The performance appraisal is regulated in accordance with the provisions of Chapter X of Administrative Instruction No. 37/2016 on Regulating Customs Officers Labour Relations. According to its Article 75, the results of the performance appraisal have an impact and effect on determination of training needs, aptitude of a customs officer for career advancement or degradation, existence of conditions for conversion of probationary period into a long-term or unlimited contract or dismissal, transfer and granting a special leave. Moreover, the outcome of performance appraisal is used to enable their further enhancement of performance at work. Appraisal is also taken into account during disciplinary proceedings. Performance appraisal is carried out by the direct supervisor of the employee and validated by the approving supervisor.

469. Customs officers who disagree with the final appraisal of the approving supervisor may send written objections to the Human Resources division within 7 calendar days from the date of signature of the Performance Appraisal Report by the direct manager and approving manager. In their request, they should briefly state the reasons why they believe a higher rating should be given (see Article 81.4). There is also a possibility of review by the Appeals

¹⁴⁴ Except when a staff member is on unpaid or maternity leave, suspended, or on hold as well as in case of a new staff member.

Committee. As for civil servants, the complaint is reviewed by the Committee for Dispute Resolution and Complaints.

Year	Appraisal score	Gender		Total of submitted appraisals ¹⁴⁵
		F	M	
2014	3	41	186	227
	4	64	213	272
	5	0	4	4
2015	3	27	91	118
	4	74	257	331
	5	1	2	3
2016	2		1	1
	3	25	124	149
	4	85	273	358
	5	1	9	10
2017	2	0	1	1
	3	37	127	164
	4	85	236	321
	5	0	8	8

470. Promotion (through internal competition procedures), transfer and demotion are decided by the DG, in accordance with the provisions of the Customs and Excise Code No. 03/L-109, and Chapter VII of the Administrative Instruction No. 37/2016 on Regulating Customs Officers Labour Relations.

Termination of service and dismissal from office

471. Based on the provisions of Administrative Instruction No. 16/2015 on Disciplinary Procedure, the Disciplinary Committee issues a recommendation on disciplinary responsibility and imposes disciplinary measures, among which the *inter alia* measures of degradation and interruption of the employment relationship. This recommendation is ratified by the DC.

472. The right to a regular appeal is permitted and regulated by the abovementioned legal provisions in the section regarding recruitment and appointment. Therefore, towards the recruitment, advancement, transfer, and dismissal process in accordance with Administrative Instruction No. 18/2015 on Appeals Procedures, the right of uniformed staff to complain is presented through the Human Resources Sector to the Appeals Commission which is competent to review staff complaints.

Rotation and mobility policy

473. Staff are subject to regular rotation through the transfer system on the basis of service needs. Customs management ensures through relevant services inspecting and reporting of breaches and irregularities in work processes.

474. In accordance with the provisions of Chapter IX of Administrative Instruction No. 37/2016 on Regulation of Customs Officers Labour Relations the KC has regulated the issue of the transfer of customs officers. On the basis of required criteria, the KC applies three types of transfers: 1. Transfer for customs purposes; 2. Transfer at the request of customs officers; and 3. Disciplinary transfer.

475. Referring to the provisions of this chapter, the DG makes the transfer of staff according to the needs of the institution, in accordance with the transfer criteria referred to in Article 64 of

¹⁴⁵ The authorities have clarified the difference between the total number of evaluations in 2016 (518) and in 2017 (494) due to absence of staff members when on unpaid leave, maternity leave, suspension and new staff that cannot be assessed on work performance.

the Instruction. Moreover, according to Article 68 of the Instruction, the DG may transfer customs officers who are subject of initiated investigations for disciplinary violations or criminal offences upon recommendation of the respective director, as long as these investigations are under process.

476. Avoidance of regular transfer: According to the provisions of Article 71 of the aforementioned Instruction, transferred customs officers are obliged to immediately (verbally or in writing) report to Human Resources any potential conflict of interest which may arise after their transfer. Officers who have such cases of potential conflict of interest shall be mandatorily transferred to another customs office/sector.

Salaries and benefits

477. Monthly salaries of customs uniformed employees vary by rank and function from EUR 386 for the Customs Cadet to EUR 1,773 for the Director General.

478. Risk-related additional remuneration and other benefits are applicable for customs officers according to Administrative Instruction No. 36/2016 on Salaries, Additions and Remuneration applicable to the KC. In case an LEA ceases, the right to benefit from these additional remuneration is terminated. Additional remuneration and benefits are monitored under the same administrative instruction.

479. All applicable types of fixed gross monthly amounts of additional benefits are presented as following: for risks (three levels) it varies from EUR 107 to EUR 191, for IT (three levels) it varies from EUR 200 to EUR 500; for irregular working hours (custodian, night, extra-time, weekend, official holidays) a 20%-50% supplement of the basic salary per working hour is provided.

Conflicts of interest

480. Conflict of interest is defined by the Code of Conduct of Kosovo Customs (Article 17).¹⁴⁶ Prevention of conflict of interest is done through investigations and rotation of staff. Likewise, each official is obliged to report at the moment when s/he encountered a conflict of interest. All related procedures to declare interests and *ad hoc* conflicts of interests are regulated by the Administrative Instruction No. 15/2016 on Disciplinary Procedures in Kosovo Customs and with the Administrative Instruction No. 37/2016 on Regulating the Employment Relationship for Customs Officers. The rules also apply to private interests, business partners, etc.

481. The Sector for Professional Standards and the specific supervisor of each customs officer are obliged to review statements about potential conflict of interest.

482. So far, the KC has dealt with 10 cases of conflict of interest. The applied sanctions are 2 cases of mandatory transfer of staff.

483. In the already mentioned Customs Operational Strategy Plan 2016-2018 (see paragraph 440) one of the six main strategic goals concerns the effective prevention of conflict of interest. The main objective in preventing the conflict of interest while performing the official duties by customs officers is the improvement of mechanisms and means to prevent, identify and avoid appearance of conflict of interest cases through effective processes for risk identification, prevention of eventual cases as well as staff training for conflict of interest.

484. The AT welcomes this clear statement on conflicts of interest and is convinced that the KC has taken the content itself seriously. As the Plan expires this year the new Plan 2019-2021 which is being prepared shall include concrete goals, terms and dates and also present responsible employees assigned to act as owners for the achievement in order to bring this approach in the fight against corruption and further promotion of integrity to an even more concrete level.

Prohibition or restriction of certain activities

485. Specific restricted or prohibited activities are included in several sublegal acts, including Administrative Instruction No. 37/2016 on the Regulation of Labour Relations of Customs

¹⁴⁶ Administrative Instruction No. 37/2016 on Regulating the Employment Relationship for Customs Officers also contains a provision related to conflict of interest (Article 71).

Officers, Code of Conduct for Customs Officers No. 71/2009, Administrative Instruction No. 70/2009 on Asset Declaration and Administrative Instruction No. 06/2013 (Article 6, paragraph 3).

Gifts and hospitality

486. The law in relation to the receipt of gifts by public officials is discussed in paragraphs 190-201 above. The provisions of LSC, LDCP and LPCI, in their application to gifts, apply to all customs officers since all customs officers are official persons within the meaning of the law. See detailed discussion above of this law in its application to the police which is also applicable to customs.

487. Moreover, Article 12 of the Code of Conduct for Customs Officers No. 71/2009 regulates receiving of gifts, rewards, hospitalities and discount of prices for the KC staff. As a rule, customs officers are prohibited to accept gifts or hospitality of any kind, except for (i) inexpensive gifts such as tie, calendar or diary under a mutual respect relationship; (ii) whether the refusal of gift would culturally offend the giver; and (iii) when the gift is given in public and its refusal would embarrass the giver. The customs officer shall inform the direct manager on any offered or received gift, profit, reward, hospitality or discount. Hospitalities are allowed when they relate to official duties (e.g. working dinner) or legitimate representation functions (see also Article 3, paragraph 5).

488. In addition to these provisions, the Code of Ethics for border officials contains detailed and specific provisions concerning the receipt of gifts by border officials, including police as well as customs officials. Article 3 provides that border officials are strictly not allowed to receive money, regardless of the amount, or any other valuable item. Article 12 sets out the circumstances in which gifts or hospitality may be accepted, which are where the gift is not costly by nature and refusing to accept it might cause an insult which is cultural in nature or the gift is given in a public forum where refusal might humiliate the donor, or the hospitality is connected with duty requirements such as an official dinner. In all cases the accepted gift must be notified to the supervisor immediately.

Incompatibilities, outside activities and financial interests

489. The provisions of Article 9 of the new Law No. 06/L-011 on the Prevention of Conflict of Interests in Discharge of a Public Function (LPCI) in relation to prohibited work (Article 11) and Article 17 relating to declaration of official's private interests also apply to all customs officers. The detailed discussion above (see paragraph 336) of this law in its application to the police is also applicable to customs.

490. The DG of the KC and the Directors of KC Departments are senior officials within the meaning of the above mentioned law so the provisions relating to incompatibilities of exercise of other functions apply to them. In this respect, see above detailed discussion (see paragraph 352) of this law in its application to the senior officials of the police which is also applicable to these senior officers of customs.

491. Article 4 of the Code of Conduct for Customs Officers regulates public interest and political impartiality. While customs officers are expected to act in line with public interest, to protect and raise the level of credibility and to ensure high standards of service, the activity of political parties, organisations and associations is prohibited in the KC. Membership in political entities shall not influence in professional behaviour during the exercise of functions within the KC. In particular, customs officers are prohibited to make any inappropriate public comment that has to do with politics and programs; they have to abstain from active involvement in political activities or should avoid in taking part in any political or public activity that may risk or appear to risk their impartiality in carrying out their functions.

492. The Code of Conduct for Customs Officers obliges customs officers to inform managers or the SPS on any offered gift, profit, reward, hospitality and discount (Article 3.5 and 12); awards or prizes offered in relation to their official duties (Article 16). Moreover, it prohibits them from receiving profits as a result of the purchasing of goods and services from official funds (Article 14); accepting without due approval offers of free travel for official purposes (Article 15) and requires prior authorisation in order to get additional paid employment (Article 20).

493. There are no statistics provided for in relation to above as there are no reported cases of this nature, with the exception of cases involving conflict of interest that were reported and dealt with in 2017. The database serving the SPS which is in MS Access and is accessible for the officials of this sector and its hierarchical line may generate information on the type of violation, initiator, persons involved etc. The investigated and completed disciplinary violations for 2017 include one case involving acceptance of bribes, 9 cases of negligence at work, one case of aggravated negligence at work, one case of unprofessional behaviour, and two cases of misuse of official duty.

Misuse of public resources

494. Misuse of public resources by an official person (which includes all customs officials) amounts to the criminal offence of abusing official position or authority contrary to Article 422 of the Criminal Code. According to paragraph 2.4 of Article 422 misusing government property, services, personnel, or anything of value belonging to the government that has come into the official's use or possession by virtue of the official's office or employment constitutes the offence.

495. According to Article 10 of the Code of Conduct No. 71/2009, customs officers are prohibited unless specially authorised to use KC resources or services for personal or benefit purposes (including vehicles and other equipment, office equipment, computers and software, safety passes and official inventory, stamps and postal services).

Third party contacts, misuse of confidential information

496. Disclosing official secrets is an offence under Article 433 of the Criminal Code of Kosovo.

497. Disclosing confidential information for personal undue advantage is prohibited under Article 9, paragraph 1.6 of the LPCI. This law also contains a number of provisions which prohibit certain third party contacts by officials, including customs officials.

498. In line with Article 22 of the Code of Conduct for Customs Officers, customs officers are bound by confidentiality requirements during and after the end of their official duties. According to Article 23, KC officials cannot answer to any request for proving evidence, information or similar services without prior authorisation. This includes any request from competent authorities in order to provide official evidence or disclose any information in front of the court or for criminal investigation needs or in any other official capacity.

499. Article 24 of the same code of conduct prohibits customs officers from contacting or communicating with the media or answering to direct invitations to take part in any radio or television programme without prior authorisation from the DG. Any direct contact in this regard has to be referred to the KC spokesperson.

500. Customs officers must also obtain the permission of the DG before publishing any book, letter, e-mail or article, including on the Internet, or giving any lecture connected with their work or with KC activities.

501. Standard operating procedures (SOPs) are drafted, reviewed at the end of every year and approved by respective directors. Whenever needed as a result of amended laws or by-laws that may affect competences, SOPs are reviewed and upgraded before the end of the year. Each law enforcement officer reads and signs SOP. Contact with the parties is done through the information received. Authorisations for investigative actions are taken by responsible prosecutors and competent courts. At this stage, strict reporting of witnesses is also maintained.

Post-employment restrictions

502. The DG of KC and the Directors of KC Departments are senior officials within the meaning of the LPCI so the post-employment restrictions apply to them. Post-employment restrictions regime described earlier in this report applies to the KC (see paragraphs 206-207 and 363-364).

Examples and statistics

503. Customs reported 7 cases of corruption and violations of the official duty that resulted in dismissal as well as criminal prosecution (6 in 2016 and 1 in 2017). One case involves organised crime-smuggling. All offenders were males.

504. The KC reported that they had no statistics in relation to the receipt of gifts, the exercise of outside activities, the holding of financial interests, contacts with third parties, the misuse of confidential information, the misuse of public resources, or employment in secondary occupations or post-employment occupations. The AT was informed that this is because there were no such cases. **The AT recommends that Kosovo Customs continue to pay attention to the recording of and compiling of statistics in relation to infringements of the disciplinary and ethical rules applicable to customs officers.**

Declaration of assets, income, liabilities and interests

Disclosure requirements

505. The DG of the KC and the Directors of Customs Departments are senior officials within the meaning of Law No. 04/L-050 on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials so its provisions in relation to asset declarations apply to them.

506. The provisions of Article 17 of the new Law No. 06/L-011 on the Prevention of Conflict of Interests in Discharge of a Public Function relating to declaration of official's private interests also apply to all customs officials.

507. There is specific regular declaration of assets by all customs officers pursuant to the Code of Conduct for Customs Officers No. 71/2009. There are around 120 periodical annual declarations of assets which are checked on daily basis. Changes in assets have to be declared within 15 days following their occurrence.

508. Declaration requirements are included in the Code of Conduct for Customs Officers No. 71/2009 and Administrative Instruction No. 37/2016 on Regulation of Labour Relations of Customs Officers. Regular declaration of assets is made for any change of more than EUR 2,000. Administrative Instruction No. 70/2009 on Wealth Declaration and Alterations in Property provides for movable and immovable assets, income, liabilities and interests to be declared in Articles 5, 6, 12, 16 and 17. Declaration form must be accompanied by related evidence justifying or explaining occurring changes.

509. Moreover, according to the Code of Conduct for Customs Officers No. 71/2009, customs officers are obliged to inform managers or the SPS on any offered gift, profit, reward, hospitality and discount (Article 3, paragraph 3.5 and Article 12); illegal or unethical requests (Article 6, paragraph 2); use of official property and services in accordance with related requirements (Article 10); awards or prizes offered in relation to their official duties (Article 16); conflict of interest situations including seeking advice (Article 17). Moreover, they are prohibited from receiving profits as a result of the purchasing of goods and services from official funds (Article 14); accepting without due approval offers of free travel for official purposes (Article 15); answering to any request for providing evidence, information or similar services without prior authorisation (Article 23). Furthermore, they have to declare shareholding property of any kind to the SPS (Article 18); have prior authorisation in order to get additional paid employment (Article 20) and declare changes in their assets (Article 21).

510. Family members are obliged to declare joint interests but not interests which are solely theirs. Declarations should be made for any change in value of EUR 2,000 or more. Declarations are submitted to the Sector for Professional Standards. The files are physically stored and are not made public.

511. Declaration forms are specially designed for such declaration and include annual declaration form, regular declaration form of changes occurring in ownership and extraordinary declaration form.

Review mechanisms

512. The entities responsible for carrying out checks and reviews are specified in the Code of Conduct for Customs Officers No. 71/2009 (Article 25) and Administrative Instruction No. 37/2016 on Regulating Customs Officers Labour Relations.

513. No separate statistics were provided because they are included in the information on general disciplinary procedures (see paragraph 445).

Supervision and enforcement

514. In the KC each organisational unit is clearly set within the hierarchy of responsibility. The hierarchical line enables accountability and control of official action, as well as functional units of internal control and quality assurance. The Internal Auditing Unit is placed under the direct hierarchy of the DG as is the Sector for Professional Standards and Inspection. Also, the general quality assurance sector has been established, with particular focus on quality control in customs procedures.

Internal oversight and control

515. The internal audit assessment is carried out by the Internal Auditor, the Sector for Professional Standards and the General Quality Management Sector.

516. The Internal Audit Office currently has 3 officers (the gender breakdown is 2 females and 1 male). According to the Internal Audit Law and Government Decision, the Director of the Internal Audit Office has a coefficient of 19.3 which is equivalent to the coefficient of the Secretary General of the Ministry whereas the Internal Audit staff has the coefficient 15 which is close to the Director of Internal Audit.

517. All Internal Audit Office staff are certified as Internal Auditors by CIPFA - London (International Internal Audit Certificate). Also, according to Article 25 of the Law No. 06/L-021 on Public Internal Financial Control internal auditors are required to have continuous vocational education and must attend 30 hours of professional training within the year.

518. The Head of the Internal Audit Office reports directly to the DG of the KC in order to maintain the independence as defined in the legislation. The Internal Audit Office also reports to the Audit Committee and to the Central Harmonisation Unit that are part of the Ministry of Finance.

519. The Standards and Inspection Sector have 4 employees (3 females and 1 male), have legal powers for disciplinary and inspection procedures management and have received the necessary professional training to enable them to adequately perform their work. The Sector for Professional Standards reports to the DG in order to avoid the possibility of exercising influence by holders of other managerial positions or political influence.

520. The General Quality Management Sector also reports to the DG and consists of 7 trained officers in the areas of quality control who have a control mandate, operate without influence and have unrestricted access to control of customs practices and procedures applied.

521. All officials, without exception, have the opportunity to report irregular events and pressures on them to neglect or to take any action that is not legal. Furthermore, Law No. 04/L-043 on Protection of Informants has provided additional protection to officials and the public that provides information on an illegal offence occurring within the organisation. The provisions of this law, notwithstanding the criticisms of it made elsewhere in this Report, have guaranteed the adequate treatment of the informant and provided legal protection against non-discrimination due to reporting.

522. The KC applies strict policies regarding discipline in general and cases of suspicion of bribery in particular. The KC has established legal instruments to deal with reporting cases of misuse of any kind of work, while it relies on reporting mismanagement through a hotline operated by established customs officers at the National Centre of Integrated Border Management. Persons reporting wrongdoing are guaranteed the secrecy of identity, while all reports are communicated without delay to the relevant officials.

523. Investigations are initiated by internal reporting of control and inspection functions, from managerial supervision lines, intelligence information, public or media reporting etc. Depending on the indications, an assessment is made as to whether the alleged misconduct may qualify as a criminal offence or a disciplinary administrative offence, so according to these assessments it is decided whether the proceeding will be conducted by the level of professional standards (when indications indicate misconduct) or level of criminal investigations (where the indications indicate a suspicious criminal offence) and consequently in certain cases there may be a joint investigation but usually in these cases the competent Prosecutor is notified and the investigations are conducted by Kosovo Criminal Investigators.

524. The following anti-corruption investigative and disciplinary measures may be applied:

- Collection of information by the parties at the National Centre of Integrated Border Management;
- Exchange of information at international level on the value, origin and authenticity of the relevant documentation;
- Activity of Quality Management Sector, Reports of Regional Directorates regarding disciplinary violations including corruption;
- Disciplinary and criminal investigation of each case;
- Cases of serious disciplinary violations are filed before the Disciplinary Commission, which may recommend to the DGJ the measure of dismissal as a stronger administrative measure;
- Violations of elements of criminal offences are investigated by the Kosovo Customs Investigation Sector;
- Double checks on goods may be carried out depending on the information received and risk management assessments;
- Post-documentary controls may be applied with the right to collect taxes and apply other measures up to a period of 3 years from the date (after) of the import of goods;
- Implementation of standard forms for investigative steps for all cases;
- Field inspections may be conducted by the Sector for Professional Standards with the aim of detecting and reporting procedural gaps including recommendations with concrete action proposals for avoiding procedural failures or improving system efficiency;
- Management and control of property declaration for suspicious cases.

525. The ASYCUDA electronic system provides full access to customs documents and the tracking of the procedural steps used by customs officers to provide information about concrete actions such as: who has checked the documentation, who has examined the goods, or who has carried out evaluations.

526. The oversight and investigation mechanisms in the KC are as follows:

- The SPS (Sector for Professional Standards) is responsible for the conduct of a disciplinary procedure for administrative violations as well as for cases of criminal offences. After receiving a complaint SPS analyses and records and continues with administrative investigations. If there are elements of a violation the case is reported for the disciplinary procedure in the commission formed by the KC.
- The Disciplinary Committee is authorised to make a decision based on the findings of the investigation. If the outcome establishes that the official has committed a criminal offence, the case is reported to the Prosecutor through the Investigation Sector.

527. The Sector for Professional Standards is the competent sector for the prevention and investigation of corruption cases at the administrative level, while the Sector of Investigation has responsibility at the criminal level. The Intelligence Sector collects and processes data and passes it to one of these sectors.

528. The Sector for Professional Standards reports directly to the DG. Its gender structure is 60% female. It is financed from the Kosovo budget:

- a) Staff are required to have knowledge of Kosovo's laws and experience in advanced anti-corruption investigations;

- b) The basic qualification is that this staff does not have a disciplinary record and has investigative skills based on the specialised experience in the field of the KC;
- c) Mandatory anti-corruption training is organised by the American Embassy, ICITAP and Government.
- d) These bodies report both to the DG and Disciplinary Committees.
- e) Disciplinary bodies cooperate through procedures set out in Administrative Instruction No. 15/2016 on Disciplinary Procedures in Kosovo Customs.

529. Reporting takes place at hierarchical level to the DG, and in cases of administrative violations, the SPS is also notified. The investigation staff consists of 12 investigating officers 83% male and 17% female. All investigators have the same legal powers, but reports are decided on a hierarchical basis. Intelligence staff consists of 9 officials (and is being organised at the field level (4 officials at the field level, 3 analysts and 2 liaison officers with the other agencies such as ILECU and FIU).

External oversight

530. While being a central agency under the Ministry of Finance, the KC are also subject of oversight from the National Audit Office, the Parliament, the Prosecutor's Office, the courts and the KOI.

Reporting misconduct or crime, whistleblower protection

531. Customs officers have a duty to report misconduct under the Code of Conduct for Customs Officers and Administrative Instruction (MIA) No. 16/2015 for Determination of Violations, Disciplinary Measures and Disciplinary Proceedings towards Employees of PIK. Each official is obliged to report irregularities.

532. During 2017, there were 35 cases of alleged misconduct which include 3 suspensions, 1 dismissal and 7 pre-dismissals, 6 disciplinary transfers, 6 financial sanctions, 8 verbal reprimands and 4 continued suspensions for cases in previous years.

Remedy procedures for the general public

533. Hotlines are available to the public. There is a website but in some cases there is little or no information when one tries to go beyond the home page. The applicable administrative acts, disciplinary regulations and codes of ethics are not accessible. **The AT recommends that Kosovo Customs ensure that its website is kept up to date and contains all the information required to enable a complainant to assess whether there is a basis to complain.**

Enforcement and sanctions

534. Implementing mechanisms are:

- Investigations from the Customs Investigators;
- Investigations from the Sector for Professional Standards;
- Joint investigations with the KAA regarding cases of conflict of interest.

Disciplinary procedure

535. Sanctions are provided for in Administrative Instruction No. 15/2016 on Disciplinary Procedures in Kosovo Customs which include: verbal or written admonishment, demotion, dismissal from office, as well as sanctions which may be imposed following conviction for criminal offences. The possibility of appeal is provided for in the Administrative Instruction on Appeals Procedures in KC.

536. The complaint system is regulated so as to allow any potential complainant using 5 hotline numbers that are managed at the level of the Centre for Integrated Border Management.

537. The SPS is responsible for investigating complaints. Complaints are made free of charge. Complaints are processed in conformity with Administrative Instruction No. 15/2016 on Disciplinary Procedures in Kosovo Customs. Citizens have been constantly informed about the possibilities of complaints through television and electronic media.

538. Decisions on the measures implemented are communicated directly to the customs officer, and its hierarchical line, as well as the SPS and Human Resources but are not made public.

Criminal proceedings against customs officers

539. Customs reported 7 cases of corruption and violation of official duty resulting in dismissal as well as criminal prosecution (see table under paragraph 445).

Immunities or other procedural privileges

540. Customs officers do not enjoy any immunity against criminal investigation.

6. RECOMMENDATIONS

1. Corruption prevention in central governments (top executive functions)

- i. (i) that, for the sake of transparency, the names of “political advisors” and of “external political advisors” as well as any unpaid advisors in central government are published online and, in respect of the two latter categories, that information on their main job and ancillary activities, including “work-performance” contracts executed for central government, and the names of those providing for their salaries is easily accessible online; and (ii) to establish objective criteria and transparent procedures for the appointment and functions of political advisors and support staff (paragraph 68);**
- ii. that (i) Kosovo authorities clarify the existing legal framework where problems of regulation of a certain topic by several different laws occur, causing inconsistencies; and (ii) more consideration should also be given to assessing resources needed for implementation of any draft law prior to its adoption so as to facilitate its implementation (paragraph 100);**
- iii. that the Kosovo Anti-corruption Agency’s needs for financial and personnel resources in the areas of prevention, conflicts of interest, asset declarations and lobbying be assessed by an independent authority and, based on the assessment, needed resources be increased as a matter of priority (paragraph 105);**
- iv. that (i) a Code of Conduct for PTEFs, including external political advisors be elaborated; and (ii) in order for the provisions of the Code to be effectively applied in practice, an efficient mechanism of supervision and sanction, which takes into account the specific nature of the governmental mandate, be established (paragraph 116);**
- v. (i) to develop efficient internal mechanisms to promote and raise awareness of integrity related matters specifically related to the PTEFs (including confidential counselling and regular training of persons entrusted with top executive functions); (ii) the Kosovo Anti-corruption Agency should be given a clear mandate and a leading role in the area of raising awareness activities; and (iii) to ensure that bodies entrusted with training competences have adequate capacities to be able to perform tasks vested in them in connection with awareness-raising activities (paragraph 127);**
- vi. that (i) detailed rules be introduced on the way in which PTEFs interact with lobbyists and other third parties seeking to influence the government’s legislative and other activities; and (ii) that sufficient information about the purpose of these contacts be disclosed, such as the identity of the person(s) with whom (or on whose behalf) the meeting(s) took place and the specific subject matter(s) of the discussion (paragraph 158);**
- vii. to take appropriate measures to ensure effective supervision and enforcement of the new law on prevention of conflict of interest (paragraph 186);**
- viii. (i) to harmonise and amend the rules on gifts in order to avoid any conflicts between laws and to put provisions in line with Council of Europe standards; (ii) to ensure effective supervision over reporting obligations; and (iii) to make the gift registers publicly available in order to promote transparency (paragraph 201);**
- ix. to take appropriate measures to ensure effective supervision and enforcement of post-employment restrictions in respect of all senior officials (including PTEFs) including by creating effective internal system of supervision within the Kosovo Anti-corruption Agency (paragraph 207);**

- x. **(i) to introduce effective, dissuasive and proportionate sanctions for breaches of LDGP; (ii) to ensure without abandoning the random element that every official is checked from time to time; (iii) to ensure that property subject to an appropriate threshold which is acquired and disposed of since the previous declaration is also disclosed; and (iv) to take appropriate measures to ensure effective supervision and enforcement of the law on asset declarations for all relevant public officials including external political advisors (paragraph 227).**

2. Corruption prevention in law enforcement authorities

2.1 Police

- xi. to ensure ample publication and easy access to all regulatory and relevant documents regulating the Kosovo Police tasks and activities without compromising its operational activities (paragraph 266);**
- xii. (i) to continue to develop concrete operational mechanisms with clearly defined measures and deadlines for their implementation and the identification of responsible persons in the anti-corruption strategic/policy documents; and (ii) to give structural attention to the progress made on ongoing intentions and plans in the field of integrity and the fight against corruption (paragraph 276);**
- xiii. (i) that a single unified Code of Ethics should apply to all law enforcement officers working in the Integrated Border Management with specific additional provisions if necessary to address more broadly conflicts of interest and political activities, and so as to offer practical guidance through explanatory comments and practical examples on all corruption-related subjects; (ii) to ensure a clear and credible mechanism of supervision and sanctions; and (iii) to develop effective internal mechanisms to promote and raise awareness of integrity related matters for law enforcement officers working in the Integrated Border Management (including confidential counselling and regular training) (paragraph 287);**
- xiv. that the acceptance of even minor gifts by police officers should be prohibited unless the gift is of a nature which is expressly permitted by the Code of Conduct or has been approved by a senior officer (paragraph 349);**
- xv. that a public official should be required to disclose any intellectual property rights and should be precluded from decision-making in relation to any decision to make a public use of the thing which is the subject of that right (paragraph 355);**
- xvi. that the Government of Kosovo keep under review the effectiveness of the provisions of the LPCI concerning conflicts of interest by senior officials in cases where they have a proprietary interest in a company with a view to amending the law should that become necessary (paragraph 356);**
- xvii. that regular training programmes and awareness raising measures for police in the area of conflicts of interest, gifts, incompatibilities, restrictions on post-employment activities and whistleblower protection be prioritised and intensified (paragraph 365);**
- xviii. that if the practice of integrity testing of police officers suspected of corruption is to be resumed it should be subject to suitable safeguards such as being authorised by a judicial decision following an application by the prosecutor based on the existence of a reasonable suspicion and the absence of other effective means to investigate the matter (paragraph 381);**
- xix. that (i) the Ombudsperson Institution should be more willing to initiate complaints to the appropriate authorities in cases of obstruction or non-compliance; (ii) furthermore, where the Ombudsperson Institution issues a report which makes a recommendation, in addition to the existing obligation on the addressee of the recommendation to make a written report within a**

reasonable timeframe, the addressee should be obliged either to implement that recommendation within a specified period or to make a written report explaining why the recommendation should not be followed which should be required to be referred to and debated in the Assembly; and (iii) the Ombudsperson Institution should receive any necessary additional resources to enable and to ensure the effective exercise of these enhanced powers (paragraph 391);

xx. (i) to adopt adequate whistleblower protection measures to be also applicable to Kosovo Police, including the Border Police; (ii) to ensure necessary implementation of whistleblower protection measures; and (iii) to integrate modules on whistleblower protection into existing and future training programmes (paragraph 400).

2.2 Customs

xxi. that Kosovo Customs continue to pay attention to the recording of and compiling of statistics in relation to infringements of the disciplinary and ethical rules applicable to customs officers (paragraph 504);

xxii. that Kosovo Customs ensure that its website is kept up to date and contains all the information required to enable a complainant to assess whether there is a basis to complain (paragraph 533).